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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1008.

THE TOWN OF PANA, PLAINTIFF IN ERROR,

VS.

JAMES H. BOWLER AND ISAAC H. MERRILL, PARTNERS AS BOWLER AND MERRILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 9, 1882.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the southern district of Illinois, before you, between James H. Bowler and Isaac H. Merrill, partners as Bowler and Merrill, plaintiffs, and The Town of Pana, in Christian County, Illinois, defendant, a manifest error hath happened to the great damage of the said defendant, The Town of Pana as by its complaint appears:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme 2 Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, in said district, this 5th day of August, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh year.

[SEAL.] J. A. JONES,
Clerk U. S. Cir. Court, South. Dist. of Ill's.

(Indorsed:) Supreme Court of the United States. Town of Pana, pl'ff in error, vs. James H. Bowler et al., def'ts in error. Writ of error. Filed August 5th, 1882. J. A. Jones, clerk.

3 *Placita.*

Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. John M. Harlan, one of the associate justices of the Supreme Court of the United States, presiding judge, and the Hon. Samuel H. Treat, district judge of said district and associate judge of said circuit court, on Tuesday the 20th day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh year.

J. A. JONES, *Clerk.*

JAMES H. BOWLER AND ISAAC H. MERRILL,
partners as Bowler and Merrill,
vs.
THE TOWN OF PANA.
} 6270. Assumpsit.

4 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

James H. Bowler and Isaac H. Merrill, partners as Bowler and

Merrill, citizens of the State of Maine, plaintiffs in this suit, put in their place Messrs. Sanders and Williams, their attorneys, against the Town of Pana, a body corporate and politic, organized under the laws of the State of Illinois, and a citizen of said district, defendant, in a plea of trespass on the case on promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 16th day of December, in the year of our Lord one thousand eight hundred and eighty-one, came the plaintiffs, by their attorneys, and filed in the office of the clerk of said court their bond for costs and declaration in said cause, which are in the words and figures following, to wit:

5 *Cost bond.*

Circuit court, United States of America, southern district of Illinois, January term, A. D. 1882.

JAMES H. BOWLER AND ISAAC H. MERRILL
vs.
THE TOWN OF PANA.
} In assumpsit.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 13th day of December, 1881.

SANDERS & WILLIAMS.

(Endorsed:) Filed December 16, A. D. 1881. J. A. Jones, clerk.

Declaration.

In the United States circuit court for the southern district of Illinois, of the January term, A. D. 1882.

6 JAMES H. BOWLER AND ISAAC H. MERRILL, partners,
vs.
THE TOWN OF PANA.
} Assumpsit.

And now come the plaintiffs, James H. Bowler and Isaac H. Merrill, partners, as "Bowler & Merrill," citizens of the State of Maine, by their attorneys, Sanders & Williams, and complain of the defendant, the Town of Pana, a body corporate and politic, organized under the laws of the State of Illinois, and a citizen of said district, of a plea of trespass on the case on promises; for that whereas the defendant heretofore, to wit, on the twenty-eighth day of June, A. D. 1873, at the district aforesaid, made and delivered to the Springfield and Illinois Southeastern Railway Company its certain one hundred and forty-four obligations, commonly called coupons, more particularly described as follows, to wit: Eighteen (18)

coupons from certain bonds of said Town of Pana, for one thousand dol-
lars, dated June 23d, 1873, due twenty years from date, said bonds
7 bearing numbers from 1 to 8, and from 11 to 20, inclusive;
said eighteen coupons detached therefrom being of series 10, due
January 1st, 1878, each for forty dollars ($40.00).

Eighteen (18) coupons from certain bonds of said Town of Pana, for one thousand dollars each, numbered from 1 to 8, and from 11 to 20, inclusive, dated June 28th, A. D. 1873, due after five and within twenty years of date, at the option of said town, said eighteen coupons (one detached from each of said bonds) being of series 11, due July 1st, A. D. 1878, each for forty dollars ($40.00).

Eighteen coupons from certain bonds of said Town of Pana, for one thousand dollars each, numbered from 1 to 8, and from 11 to 20, inclusive, dated June 28th, A. D. 1873, due after five aud within twenty years of date, at the option of said town, said eighteen coupons (one detached from each of said bonds) being of series 12, due January 1st, A. D. 1879, each for forty dollars (40).

Eighteen (18) coupons from certain bonds of said Town of Pana, for
one thousand dollars each, numbered from 1 to 8, and from 11 to
8 20, inclusive, dated June 28th, 1873, due after five years, and
within twenty years of date, at the option of said town, said eight-
een coupons (one from each of said bonds) being of series 13, due July
1st, A. D. 1879, each for forty dollars ($40).

Eighteen (18) coupons from certain bonds of said Town of Pana, for one thousand dollars each, numbered from 1 to 8, and from 11 to 20, inclusive, dated June 28th, 1873, due after five years, and within twenty years of date, at the option of said town, said eighteen coupons (one from each of said bonds) being of series 14, due January 1st, 1880, each for forty dollars (40).

Eighteen (18) coupons from certain bonds of said Town of Pana, for one thousand dollars each, numbered from 1 to 8, and from 11 to 20, inclusive, dated June 28th, 1873, due after five years, and within twenty years of date, at the option of said town, said eighteen coupons (one from each of said bonds) being of series 15, due July 1st, 1880, each for forty dollars ($40).

Eighteen (18) coupons from certain bonds of said Town of Pana,
9 for one thousand dollars each, numbered from 1 to 8, and from 11
to 20, inclusive, dated June 28th, 1873, due after five years, and
within twenty years of date, at the option of said town, said eighteen cou-
pons (one from each of said bonds) being of series 16, due January 1st,
A. D. 1881, each for forty dollars ($40).

Eighteen (18) coupons from certain bonds of said Town of Pana for one thousand dollars each, numbered from 1 to 8 and from 11 to 20, inclusive, dated June 28th, 1873, due after five years and within twenty years of date, at the option of said town. Said eighteen coupons (one from each of said bonds) being of series 17, due July 1st, A. D. 1881, each for $40.00.

All of said coupons being of the same form, tenor, and effect, except as to their bond and serial number and date of maturity, as above set forth, to wit, of the form, tenor, and effect of coupon No. 1, series 10, due Jan. 1st, 1878, a copy of which appears below.

All of said coupons having, moreover, been detached from the certain
bonds of said Town of Pana, above described, to wit, the certain
10 eighteen bonds of said Town of Pana for one thousand dollars
each, numbered from 1 to 8 and from 11 to 20, issued by said
Town of Pana and delivered to the Springfield and Illinois Southeastern Railway Company, dated June 28th, A. D. 1873, due after five years and within twenty years of date, at the option of said town, said coupons having been attached to said bonds as evidences of the interest due thereon, as appears from the face of said bonds; all of said bonds being of the same date, form, tenor, and effect, except as to their numbers, to wit, of the form, tenor, and effect of bond No. 6, a copy of which appears below. By each of which said one hundred and forty-four coupons the defendant, by the name and style of the "Township of Pana, Christian County, Illinois," promises to pay the bearer, on the date therein respectively specified, at the agency of the State treasurer, in the city of New York, the sum of forty dollars ($40), as interest for six months upon the bond of corresponding number, each of said coupons bearing the signature of Grove
11 P. Lawrence, supervisor of said township.

That the plaintiffs are the owners and holders of said coupons, by reason whereof the defendant, at the time and place aforesaid, became indebted and liable to pay to the plaintiffs the several amounts secured by said one hundred and forty-four coupons, according to the tenor and effect of the same, and being so indebted, the defendant, in consideration thereof, then and there promised the plaintiffs to well and truly pay to them the several sums of money in the said coupons specified according to the tenor and effect.

And whereas also the defendant afterwards, to wit, on the first day of December, A. D. 1881, became and was indebted to the plaintiffs in the further sum of fifteen thousand dollars, for money before that time paid and expended by the plaintiffs for the use of the defendant, at its request, and in the like sum for money before that time lent and advanced by the plaintiffs to the defendant, at its request, and in the like sum for money
before that time had and received by the defendant for the use of
12 the plaintiffs, and in the like sum for interest on divers sums of
money before then due and forbo'ne for divers spaces of time before
then elapsed, by the plaintiffs to the defendant, at its request, and in the like sum for money found to be due plaintiffs from defendant on an account then and there stated between them. And being so indebted as aforesaid, the defendant, in consideration thereof, at the time and place last aforesaid, promised the plaintiffs well and truly to pay to them the several sums due as aforesaid, on request. Yet although the dates of payment in the said coupons respectively specified have elapsed, the defendant has not paid to the plaintiffs the several sums in the said coupons specified, or any or either of them, or any part thereof, but neglects and refuses so to do. Nor has the defendant, though requested, paid to the plaintiffs the several other sums of money due as aforesaid, or any or either of them, or
any part thereof, but neglects and refuses so to do, to plaintiffs' dam-
13 age of fifteen thousand dollars. Wherefore they bring this their
suit.

SANDERS & WILLIAMS,
Plaintiffs' Attorneys.

Copy of coupon No. 1, *series* 10.

The Township of Pana, Christian County, Illinois, will pay the bearer forty dollars on the 1st day of January, 1878, at the agency of the State treasurer, in the city of New York, it being six months' interest on bond No. 1.

GROVE P. LAWRENCE,
Supervisor of said Township.

(On the margin in red ink :) $40.
(Across the face in red ink :) 10.

COPY OF ACCOUNT.

The Town of Pana, Dr., to Bowler & Merrill.

To money paid & expended	$15,000
" money lent and advanced	15,000
" money had and received	15,000
" interest	15,000
" account stated	15,000

14 *Copy of bond No.* 6.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, COUNTY OF CHRISTIAN.

No. 6.] Pana Township. [$1,000.

Eight per cent. railroad bond. Registered by auditor of public accounts. Principal and interest collected and paid by the treasurer of State of Illinois.

Know all men by these presents that the Township of Pana, in the county of Christian, and State of Illinois, acknowledges itself indebted to the Springfield and Illinois Southeastern Railway Company, or bearer, in the sum of one thousand dollars, with interest from the date hereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July of each year, at the agency of the State treasurer of the State of Illinois, in New York City, on the presentation and surrender of the respective interest coupons hereto attached. The principal of this bond shall be due and payable after five years and within twenty years of the date hereof, at the option of said township, at said agency in the city of New York.

15 (Across the face in red ink:) $1,000.
(On right and left margin in red ink :) 1,000 dollars ; 1,000 dollars.

This bond is one of a series amounting to one hundred thousand dollars, issued by said township in compliance with the vote of the legal voters thereof at an election held on the 30th day of April, A. D. 1870, under and by virtue of the authority conferred by an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 26th, 1867, and an act amendatory thereof, approved February 29th, 1869, and in accordance with the provisions of an act of said general assembly, entitled "An act to fund and provide for paying the railroad debts of counties, cities, townships, and towns," in force April 16th, 1869. And for the payment of said sum of money and accruing interest thereon, in the manner aforesaid, the faith of the said Township of Pana is hereby irrevocably pledged, as is also its property, revenue, and resources.

In testimony whereof the said Township of Pana has caused these presents to be signed by its supervisor and countersigned by its clerk, this twenty-eight' day of June, A. D. 1873.

16 GROVE P. LAWRENCE,
Supervisor.

ERWIN SANDERS, *Clerk.*

Coupon.	Coupon.	Coupon.	Coupon.	Coupon.

(Endorsed:) Filed December 16, 1881. J. A. Jones, clerk.

And thereupon, on the day and in the year last aforesaid, there was issued out of the clerk's office of said court a summons in said cause, directed to the marshal of said district to execute, which said summons and the return of said marshal endorsed thereon are in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

17 We command you to summon the Town of Pana, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto James H. Bowler and Isaac H. Merrill of a plea of assumpsit, to their damage, as they allege, of fifteen thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Sprinfield aforesaid, this sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the one hundred and sixth year.

[L. S.] J. A. JONES, *Clerk.*

Marshal's return.

I hereby appoint J. P. Chapman my special deputy to execute this writ. December 16, 1881.

JACOB WHEELER, *U. S. M.*

18 Executed this writ upon the Town of Pana December 17th, 1881, by reading same to & delivering a true copy thereof to E. S. Davis, supervisor of said town.

JACOB WHEELER, *U. S. M.*,
By JAS. P. CHAPMAN,
Sp'l Dp'ty.

(Endorsed:) Filed Dec'r 19th, A. D. 1881. D. A. Jones, clerk.

And afterwards, to wit, on Monday the 2d day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-two, the following proceedings were had in said court in said cause and entered of record, to wit:

Leave to amend and rule to plead.

James H. Bowler et al.
vs.
Town of Pana.
6270. Assumpsit.

On motion of plaintiffs, by Messrs Saunders and Williams, their attorneys, leave is granted to amend the papers herein, and the defendant having been regularly served with process is ruled to plead herein by Wednesday the 4th day of January inst. 19

And afterwards, to wit, on the 3d day of January, in the year last aforesaid (1882), came the defendant, by its attorneys, and filed in said clerk's office its plea in said cause; and also, on the same day, there was filed in said office a stipulation in said cause; which said plea and stipulation are in the words and figures following, to wit:

Plea.

In the circuit court, Jan'y term, 1882.

U. S. of America,
Southern Dist. of Ill's.

Town of Pana
ats.
J. H. Bowler et al.
Assumpsit.

And now comes the Town of Pana, by Henry, Cook & Lord, its attorneys, and says that it did not undertake and promise in the manner & form as the plaintiff hath above thereof complained against it, and of this it puts itself upon the country.

HENRY, COOK & LORD,
Att'ys for Def'ts.

20 State of Illinois,
Sangamon Co., ss:

W. J. Henry, one of the attorneys for the defendant, makes oath &

says that the above plea by the said Town of Pana pleaded is true in substance and in fact, as he verily believes.

W. J. HENRY.

Subscribed & sworn before me, by the said W. J. Henry, this 3d day of Jan'y, 1882.

J. A. JONES, *Clerk.*

(Endorsed:) Filed January 3rd, 1882. J. A. Jones, clerk.

Stipulation.

In the United States circuit court for the southern district of Illinois.
January term, A. D. 1882.

JAS. BOWLER ET AL.
vs.
TOWN OF PANA.

It is hereby stipulated by and between the attorneys herein that the above-entitled cause shall not be set for trial before the second Tuesday of April, 1882, and that said cause shall be tried as soon thereafter as practicable.

SANDERS & WILLIAMS,
For Pl'ff.
21 HENRY, COOK & LORD,
Att'ys for Defts.

(Endorsed:) Filed January 3d, 1882. J. A. Jones, clerk.

And afterwards, to wit, on Tuesday the 11th day of April, at the said January term of said court, in the year last aforesaid (1882), the following further proceedings were had in said court in said cause and entered of record, to wit:

Order setting cause for full bench.

JAMES H. BOWLER ET AL.
vs. 6270. Assumpsit.
TOWN OF PANA.

It is ordered by the court that this cause be heard before a full bench, and that defendant may give in evidence, under general issue, any evidence admissable under special pleas.

22 And afterwards, to wit, on the 13th day of June, in the year last aforesaid (1882), came the parties by their attorneys, and filed in said clerk's office a stipulation in said cause, which said stipulation is in the words and figures following, to wit:

Stipulation as to facts, &c., in case.

JAMES H. BOWLER ET AL.
vs. Agreement.
THE TOWN OF PANA.

It is hereby mutually agreed by the parties to the above-entitled suit that the Springfield & Illinois Southeastern Railroad Company was created by the consolidation of the Pana, Springfield & Northwestern Railroad Company with the Illinois Southeastern Railroad Company, and both of the charters of the said company and their amendments are referred to and made a part of this agreement.

It is further mutually agreed that a petition was presented to the town clerk, signed by more than twenty legal voters, asking said town clerk of Pana Township to order an election to be held on the 30th day of
23 April, 1870, to determine whether said township would donate to
the Springfield & Illinois Southeastern Railroad Company the sum of $100,000 in bonds, to become due in 20 years from date, or, at the option of the township, within five years from date, with interest at the rate of *of* 8 *% per cent.* per annum, interest payable semi-annually.

It is further mutually agreed that on the 30th day of April, A. D. 1870, an election was held in said township, in pursuance of said petition, and notice given, according to law, presided over by a moderator and town clerk, and that no election was held on that day, or any other time, in said township, in pursuance of said petition and notice, presided over by the supervisor, assessor, and collector, referring to this issue of bonds.

It is further mutually agreed that afterwards, to wit, in the spring, summer, and fall of the year 1873, the supervisor and town clerk, in pursuance of said election held and presided over by said moderator and town clerk, and without any other authority of law other than the above election and the charters and amendments above referred to, issued one hundred
24 bonds, of the denomination of one thousand dollars each, bearing interest at the rate of eight per cent., interest payable semi-annually; said bonds to become due and payable in twenty years, or, at the option of the township, in five years, and that the coupons herewith offerred in evidence are coupons attached to said bonds, and are now and were before the commencement of this suit, held and owned by the plaintiffs.

It is further mutually agreed that afterwards, to wit, in the year 1876, The Town of Pana, John C. Hagler, Nelson Warren, and D. E. Bogue filed a bill in chancery in behalf of themselves and all the other tax-payers of the township, in the Christian circuit court, against Charles E. Lippincott, auditor of public accounts of the State of Illinois; Thomas A. Ridgway, treasurer of the State of Illinois; Amos A. Rhodes, treasurer of Christian County, Illinois; William H. Kirkwood, county clerk of Christian County, Illinois; William Pubbitt, town collector of the town of Pana; H. N. Schuyler, William E. Hayward, John Vidder, William Houston & the unknown holders and owners of said bonds and coupons issued by
25 the town of Pana, and that at the March term of the circuit court
the said Schuyler, Hayward, Viddeer, and Houston, appeared and answered to said bill, and moved the court to dissolve an injunction which had before that time been issued in said cause: that afterwards, at the August term of said court, a decree was entered in said court dissolving said injunction and dismissing said bill; from which said decree an appeal was taken by complainants to the appellate court of the third district, and that said cause was heard by said appellate court at its November term, 1877, and that said appellate court reversed said decree dissolving said injunction and dismissing said bill, and remanded said cause with directions to said circuit court to grant the prayer of complainants' bill; and that afterwards

the defendants appealed from the decision of the appellate to the supreme court of Illinois.

That said supreme court affirmed said decision of the appellate court, which decision of affirmance, is reported in volume 92 of the Illinois Reports.

26 It is further mutually agreed that the final decree was entered at the November term of the Christian circuit court, A. D. 1879, in pursuance of the order and mandate of said appellate court, which said order and mandate, or a certified copy thereof, may be used on trial, subject to legal objections; also the enclosed copy of said decree of the Christian circuit court, marked "Exhibit A," is also to be made a part of this agreement, subject to legal objections.

It is further mutually agreed that the bill of The Town of Pana, complainants as aforesaid, prayed that a preliminary injunction be issued by said circuit court that said defendants, or either of them, be perpetually enjoined from levying a tax with which to pay said bonds and coupons; that said bonds and coupons be declared void; and that said owners and holders of said bonds be perpetually enjoined from in any manner selling, negotiating, or attempting to sell or negotiate, said bonds or coupons, or suing, or attempting to sue, on said bonds and coupons, or any or either of
them, or from in any manner claiming, pretending, or insisting,
27 either by their agents or attorneys, in any court of law or equity, or
elsewhere, in any manner whatever, that said township is liable upon said bonds and coupons.

That interest was levied and collected and paid by the State treasurer, as provided by law, for three years, on said issue of $100,000 of bonds.

That Grove P. Lawrence was at the time of the issue of these bonds and coupons the supervisor of the township of Pana, and Ervin Sanders was clerk of said town, and that their signatures are genuine to the bonds & coupons.

And that the plaintiffs were the owners of said coupons in this suit at and before the commencement of the suit.

That the following is a copy of bond # 6:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, COUNTY OF CHRISTIAN:

No. 6.] [Vignette.] [$1,000.

Registered by auditor of public accounts. Principal and interest collected and paid by the treasurer of the *the* State of Illinois.

[Vignette.] [Vignette.]

Pana Township eight per cent. railroad bonds.

Know all men by these presents that The Township of Pana, in
28 the county of Christian and State of Illinois, acknowledges itself
indebted to the Springfield and Illinois Southeastern Railway Company, or bearer, in the sum of one thousand dollars, with interest from the date hereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July of each year, at the agency of the State treasurer of the State of Illinois in New York City, on the presentation and surrender of the respective interest coupons hereto attached. The principal of this bond shall be due and payable after five years and

within twenty years of the date hereof, at the option of said township, at said agency in the city of New York.

(Across the face, in red ink :) $1,000.
(On right and left margin :) 1,000 dollars, 1,000 dollars.

This bond is one of a series, amounting to one hundred thousand dollars, issued by said township, in compliance with the votes of the legal voters thereof, at an election held on the 30th day of April, A. D. 1870, under and by virtue of the authority conferred by an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company," approved Feb'y 25, 1867, 29 and an act amendatory thereof, approved February 24, 1869, and in accordance with the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

And for the payment of said sum of money and accruing interest thereon, in the manner aforesaid, the faith of the said township of Pana is hereby irrevocably pledged, as also its property, revenue, and resources.

In testimony whereof the said Township of Pana has caused these presents to be signed by its supervisor and countersigned by its clerk this 28th day of June, A. D. 1873.

[SEAL.] GROVE P. LAWRENCE,
Supervisor.

ERVIN SANDERS, *Clerk.*

The last six months interest payable with bonds.

G. P. LAWRENCE,
Supervisor.

Copy of coupon No. 6.

$40. The Township of Pana, Christian County, Illinois, will pay the bearer forty dollars on the 1st of January, 1882, at the agency of the State treasurer in the city of New York, it being six months interest on bond No. 6.

GROVE P. LAWRENCE,
Supervisor of said Township.

30 Endorsed on the bond is the following:

AUDITOR'S OFFICE, ILLINOIS,
Springfield, June 28, 1873.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT, *Auditor P. A.*

HENRY, COOK & LORD,
Att'ys for Def't.

SANDERS AND WILLLIAMS,
For Pl't'ffs.

(Endorsed:) Filed June 13, 1882. F. A. Jones, clerk.

31 And afterwards, to wit, on the 14th day of June, in the year last aforesaid (1882), there was filed in said clerk's office, as evidence in said cause, a copy of the certificates of Grove P. Lawrence, supervisor of Pana Township, in regard to the registration of bonds and a copy of a part of the town records of Pana Township, which said copies of the certificates as to registration, and of the town records of Pana Township, are in the words and figures following, to wit:

Certificates as to registration of bonds, &c.

STATE OF ILLINOIS,
County of Christian:

PANA, *June 28th*, 1873,

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from No. one to No. twenty, incl., for $1,000 each, dated June 28, 1873, and payable January 1, 1893, or at the option of the township, 32 after five years, being in all twenty bonds, and amounting to $20,000.00, and bearing interest at the rate of eight per cent. per annum, payable semi-annually on the 1st days of January & July. These bonds are issued by the township of Pana, in the county of Christian and State of Illinois, to the Springfield and Illinois Southeastern Railroad Company, under and by authority of the provisions of an act entitled "An act to incorporate the Illinois South Eastern Railway Co.," app'd Feb'y 25, 1869, and an amendatory act of the same; also under act of general assembly entitled "An act to provide for funding the railway debts of counties, cities, and towns," approved April 16, 1869, and by a vote of the people of said township at an election held on the 30th day of April, 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefits of said act last referred to have been fully complied with, to the best of my knowledge and belief.

GROVE P. LAWRENCE,
Supervisor.

33 Subscribed and sworn to by the said G. P. Lawrence, before me, this 28th day of June, A. D. 1873.

[SEAL.]

G. I. LADD,
Notary Public.

(Endorsed on back:) Filed June 28th, 1873. C. E. Lippincott, auditor public accounts.

STATE OF ILLINOIS,
County of Christian:

AUGUST 4TH, 1873.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from No. 21 to No. 40, incl., for $1,000 each, dated July 1st, 1873, and payable July 1, 1893, being in all twenty bonds, and amounting to $20,000.00, and bearing interest at the rate of eight per cent. per
34 annum, payable semi-annually on the first days of January & July.

These bonds are issued by the township of Pana, in the county of Christian, and State of Illinois, to the Springfield & Illinois Southeastern Railroad Company, under and by authority of the provisions of an act of the general assembly entitled "An act to fund and provide for the paying the railroad debts of counties, townships, cities, and towns" in force April 16, 1869, and by a vote of the people of said township, at an election held on the thirtieth day of April, A. D. 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefits of said act last referred to have been fully complied with, to the best of my knowledge and belief.

GROVE P. LAWRENCE,
Supervisor of Pana Township.

Subscribed and sworn to by the said G. P. Lawrence, before me, this fifth day of August, A. D. 1873.

J. E. SOUTHWICK, *J. P.*

35 (Endorsed on back:) Filed August 6th, 1873. C. E. Lippincott, auditor public accounts.

STATE OF ILLINOIS,
County of Christian:

PANA, 17 *September*, 1873.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from No. 41 to No. 60, incl., for $1,000 each, dated July 1, 1873, and payable July, 1893, being in all 20. bonds, and amounting to $20,000.00, and bearing interest at the rate of 8 per cent. per annum, payable semi-annually, on the 1st days of Jan'y & July. These bonds are issued by the township of Pana, in the county of Christian and State of Illinois, to the Springfield & Illinois Southeastern Railroad Company under and by authority of the provisions of an act to incorporate the

Illinois Southeastern R. W. Co., approved Febr'y 25, 1867, and
36 an act amendatory, approved Febr'y 24, 1869, & in accordance
with the provisions of an act of said general assembly entitled "An act to fund & provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869, and by a vote of the people of said township, at an election held on the 30th day of April, 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of said act last referred to, have been fully complied with, to the best of my knowledge and belief.

GROVE P. LAWRENCE,
Supervisor of Pana Township.

Subscribed and sworn to by the said Grove P. Lawrence before me this 24th day of September, A. D. 1873.

[SEAL.] G. I. LADD,
Notary Public.

(Endorsed on back:) Filed September 25th, 1873. C. E. Lippincott, auditor public accounts.

37 STATE OF ILLINOIS,
County of Christian:

PANA TOWNSHIP, *Nov.* 13, 1873.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from No. 61 to No. 80, incl., for $1,000 each, dated July 1, 1873, and payable July 1, 1893, being in all twenty bonds, and amounting to $20,000, and bearing interest at the rate of eight per cent. per annum, payable semi-annually on the first day of January & July. These bonds are issued by the township of Pana, in the county of Christian and State of Illinois, to the Springfield & Illinois Southeastern Railway Company, under and by authority of the provisions of an act to incorporate the Illinois Southeastern Railway Co., approved February 25, 1867, and an act amendatory of the same, approved February 24, 1869, and an act of the
38 general assembly entitled "An act to fund & provide for paying
the railroad debts of counties, townships, cities, & towns," in force April 16, 1869, and by a vote of the people of said township at an election held on the thirtieth day of April, 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of said act last referred to, have been fully complied with to the best of my knowledge and belief.

GROVE P. LAWRENCE,
Supervisor Pana Township.

Subscribed and sworn to by the said Grove P. Lawrence before me this 12th day of November, A. D. 1873.

[SEAL.]

G. I. LADD,
Notary Public.

(Endorsed on back:) Filed November 14th, 1873. C. E. Lippincott, auditor public accounts.

STATE OF ILLINOIS,
County of Christian:

PANA, *December 5th*, 1873.

39 To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from No. 81 to No. 100, inclusive, for $1,000 each, dated July 1, 1873, and payable July 1, 1893, being in all twenty bonds, and amounting to $20,000.00, and bearing interest at the rate of eight per cent. per annum, payable semi-annually on the first day of July and January. These bonds are issued by the township of Pana, in the county of Christian and State of Illinois, to the Springfield & Illinois Southeastern Railway Company, under and by authority of the provisions of an act entitled an "Act to incorporate the Illinois Southeastern Railway Company," approved Feb'y 25, 1867, & an act amendatory thereof, approved February 24th, 1869, and in accordance with an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, 40 cities, & towns," in force April 16, 1869, and by a vote of the people of said township, at an election held on the thirtieth day of April, A. D. 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of *of* said act last referred to, have been fully complied with, to the best of my knowledge and belief.

GROVE P. LAWRENCE,
Supervisor of Pana Township.

Subscribed and sworn to by the said Grove P. Lawrence before me this fifteenth day of December, A. D. 1873.

[SEAL.]

J. W. KITCHELL,
Notary Public.

(Endorsed on back:) Filed December 16th, 1873. C. E. Lippincott, auditor public accounts.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, June 9th, 1882.

I, Charles P. Swigert, auditor of public accounts of the State of 41 Illinois, do hereby certify that the annexed instruments are true, full, and correct copies of certificates of Grove P. Lawrence, as supervisor of Pana Township (Christian Co.), in regard to registration of bonds issued by said township to the Springfield and Illinois Southeastern R'way Co., now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

CHAS. P. SWIGERT,
Auditor of Public Accounts.

(Endorsed:) Filed June 14, 1882. J. A. Jones, clerk.

Copy from town record.

APRIL 30TH.

At a special town meeting, held in the town of Pana, county of Christian, and State of Illinois, at Hayward's Hall, April 30th, 1870, subject to the following call election: Whereas a petition, signed by twenty or more legal voters of the township of Pana, in the county of Christian, and State of Illinois, has been presented to me, the clerk of said town-
42 ship, and filed in my office, praying that an election be called in said township to vote upon the question of said township donating $100,000 (one hundred thousand dollars) to the Springfield and Illinois Southeastern Railway Company to aid in the construction of said railway, and that in payment of said donation bonds be issued bearing interest from the completion of said road and in running order, and the location of the shops herein specified, at the rate of eight per cent. per annum, payable semi-annually, in the city of New York, on the first days of January and July, the said bonds to be payable to the Springfield and Illinois Southeastern Railway Company or bearer, and to become due in twenty years from date thereof, but payable at the pleasure of said township at any time after five years, and to be issued and delivered to said Springfield and Illinois Southeastern Railway Company in denominations of not less than one hundred dollars and not larger than one thousand dollars each, in the discretion of said railway company, to be issued and delivered upon the following conditions only, to wit:

When the said railway company shall have completed its line of
43 railway from Beardstown to Shawneetown, in this State, and shall have the cars running on the same, and shall have permanently located and established the principal machine and work-shops of said railway company for such line of railway at and within the corporate limits of the city of Pana, in said township, and shall have expended not less than ten thousand dollars in the construction of such shops within the said city of Pana, within five years from the date of the election herein, then the bonds to the amount of twenty thousand dollars shall be issued to such company; and that whenever the said railway company shall have expended an additional sum of ten thousand dollars in such city in construction of such shops, then bonds to the amount of twenty thousand dollars more shall be issued to said company; the remainder of said bonds to make the amount of one hundred thousand dollars to be issued in like installments of twenty thousand dollars on the expenditure of each additional ten thousand dollars in the construction of such shops in manner as aforesaid; provided that the said sum of fifty thousand dollars on
44 the construction of said shops shall be expended within five years from the date of this election, and the location of said shops

shall be declared and pledged by said company to be permanently fixed at said city of Pana; and that neither the principal nor the interest of said bonds shall be payable unless they shall have first been registered in the office of the auditor of public accounts by and at the expense of the holders thereof, according to the provisions of an act entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

And whereas said petition also prays that an election be called in said township to vote upon the question of subscribing one hundred thousand dollars to the capital stock of the Pana and Louisiana Railroad Company, to aid in the construction of said railroad; and that in payment of said subscription bonds be issued, bearing interest from the completion of said road and in running order, and the construction of the shops hereinafter mentioned, at the rate of eight per cent. per annum, payable semi-
45 annually in the city of New York, on the first days of January
and July; the said bonds to be made payable to the Pana and Louisiana Railroad Company, or bearer, and to become due in twenty years from date thereof, but payable at the pleasure of said township at any time after five years from their date, and to be issued and delivered to the Pana and Louisiana Railroad Company in denominations of not less than one hundred dollars, and not larger than one thousand dollars in the discretion of said railroad company, to be issued and delivered upon the following conditions only, to wit:

When the said railroad company shall have completed its line of railroad from the city of Pana to the Mississippi River, on or near the line recently surveyed by said company through Pana township, and the cars running on the same, and shall have permanently located and established the principal machine and work shops of said railroad company for such line of road, at and within the corporate limits of the city of Pana, in said township, and shall have expended not less than ten thousand dollars on the construction of such shops within the said city
46 of Pana, within five years from the date of the election herein,
then bonds to the amount of twenty thousand dollars shall be issued to such company; and that whenever the said railroad company shall have expended an additional sum of ten thousand dollars in such city in the construction of such shops, then bonds to the amount of twenty thousand dollars more shall be issued to said company; the remainder of said bonds to make the amount of one hundred thousand dollars to be issued in like installments of twenty thousand dollars on the expenditure of each additional ten thousand dollars in the construction of such shops in manner as aforesaid; provided that the said sum of fifty thousand dollars in the construction of said shops shall be expended within five years from the date of this election, and the location for said shops shall be declared and pledged by said company to be permanently fixed at said city of Pana; and that the said bonds shall not be issued or delivered in case the Pana, Carlinville, Carrollton and Clarksville Railroad Company shall have previously completed its line of road from
47 Pana to the Mississippi River, or in case the said railroad company
shall be consolidated then one hundred thousand dollars of bonds shall be issued to the said consolidated company upon the same condition

and in the same manner as specified above, and neither the principal nor the interest of said bonds shall be payable unless they shall first been registered in the office of the auditor of public accounts, by and at the expense of the holders thereof, according to the provisions of an act entitled, "An act to fund and provide for the payment of railroad debts of counties, townships, cities, and towns, in force April 16, 1869." And,

Whereas, said petition also prays that an election be called in said township to vote upon the question of said township subscribing one hundred thousand dollars to the capital stock of the Pana, Carlinville, Carrollton and Clarksville Railroad Company, to aid in the construction of said railroad; and that in payment of said subscription bonds be issued, bearing interest from the completion of said road, and in running order, and the construction of the shops hereinafter mentioned, at the rate of eight per
cent. per annum, payable semi-annually, in the city of New York,
48 on the first days of January and July; the said bonds to be made
payable to the Pana, Carlinville, Carrollton and Clarksville Railroad Company, or bearer, and to become due in twenty years from the date thereof, but payable at the pleasure of said township at any time after five years from their date; and to be issued and delivered to the Pana, Carlinville, Carrolton and Clarksville Railroad Company, in denominations of not less than one hundred dollars, and not larger than one thousand dollars, in the discretion of said railroad company, to be issued and delivered upon the following conditions only, to wit:

When said railroad company shall have completed its line of railroad from the city of Pana on a line not less than three miles north of the south line of Christian County to a point on the Mississippi River opposite Clarksville, or Louisiana, in the State of Missouri, and the cars are running on the same, and shall have permanently located and established the principal machine and work shops for such line of road at and within the corporate limits of the city of Pana, in said township, and shall have expended not less than ten thousand dollars in the construction of such
shops within the said city of Pana within five years from the
49 day of the election herein, then bonds to the amount of twenty
thousand dollars shall be issued to such company.

And that whenever the said railroad company shall have expended an additional sum of ten thousand dollars in such city in the construction of such shops, then bonds to the amount of twenty thousand dollars more shall be issued to said company; the remainder of said bonds to make the amount of one hundred thousand dollars, to be issued in like instalments of twenty thousand dollars, on the expenditure of each additional ten thousand dollars in the construction of such shops in manner as aforesaid; provided that the said sum of fifty thousand dollars on the construction of said shops shall be expended within five years from the date of this election, and the location of said shops shall be declared and pledged by the said company to be permanently fixed at the said city of Pana, and that the said bonds shall not be issued or delivered in case the Pana and Louisiana Railroad Company shall have previously completed its line of railroad from Pana to the Mississippi River, or in case the said
railroad companies shall be consolidated, then only one hundred
50 thousand dollars of bonds shall be issued to such consolidated com-
pany upon the same conditions and in the same manner as specified

above, and that neither the principal nor interest of said bonds shall be payable unless they shall first have been registered in the office of the auditor of public accounts, by and at the expense of the holders thereof, according to the provisions of an act entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

Now, therefore, notice is hereby given, that in pursuance of law, and by the order of the corporate authority of said township, an election will be held in the township of Pana, in the county of Christian and State of Illinois, on the thirtieth day of April, A. D. 1870, at the usual place of holding elections, namely, Hayward's Hall, to vote upon the proposition to donate one hundred thousand dollars to the capital stock of the Springfield and Illinois Southeastern Railway Company upon the conditions enumerated. Also, to vote upon the proposition to subscribe one hundred thousand dollars to the capital stock of the Pana and Louisiana Railroad Company upon the conditions above enumerated.

51 Also to subscribe one hundred thousand dollars to the capital stock of the Pana, Carlinville, Carrollton and Clarksville Railroad Company upon the conditions above enumerated.

Said election is to be held, conducted, and returns made as at general elections, except that no registration of voters is necessary.

The form of ballots to be voted at said election must be as follows:

"For donation to the Springfield and Illinois Southeastern Railway Company," or "Against donation to the Springfield and Illinois Southeastern Railway Company."

"For subscription to the capital stock of the Pana and Louisiana Railroad Company," or "Against subscription to the Pana and Louisiana Railroad Company."

"For subscripton to the capital stock of the Pana, Carlinville, Carrollton and Clarksville Railroad Company," or "Against subscription to the capital stock of the Pana, Carlinville, Carrollton and Clarksville Railroad Company."

Dated at Pana Township this 30th day of March, A. D. 1870.

N. B. ELMORE,
Town Clerk.

52 The meeting was called to order by A. B. Corman, town clerk.

On motion of Dr. Finley, J. W. Stark was chosen moderator, he being sworn by the town clerk.

The clerk then made proclamation that the polls were open to receive votes.

At 12 o'clock, on motion of Dr. Finley, the meeting adjourned to one o'clock p. m.

At one o'clock the meeting was called to order by J. W. Stark, moderator.

Polls opened pursuant to adjournment. At 7 o'clock p. m. the polls were declared closed by J. M. Stark, moderator;

When, upon due canvassing of the votes, the following propositions received the following number of votes:

For donation to the Springfield and Illinois Southeastern Railway Company, 438 votes.

Against donation to the Springfield and Illinois Southeastern Railway Company, 24 votes.

For subscription to the capital stock of the Pana and Louisiana Railroad Company, 429 votes.

Against subscription to the capital stock of the Pana and Louisiana Railroad Company, 26 votes.

For subscription to the capital stock of the Pana, Carlinville, Carrollton and Clarksville Railroad Company, 426 votes.

53 Against subscription to the capital stock of the Pana, Carlinville, Carrollton, and Clarkeville Railroad Company, 25 votes.

A certificate of the result we have duly certified and forwarded to the county clerk. May 3d, 1870.

J. W. STARK,
Moderator.

A. B. CORMAN, *Town Clerk.*

PANA, ILL., *June* 28, 1873.

Issued to Springfield and Illinois Southeastern Railway Company, June 28th, 1873, bonds No. one to twenty, inclusive, for one thousand dollars each, with interest coupons attached, at eight per cent. per annum, payable semi-annually in July and January first, of each year, at the New York agency of the State treasurer, the last six months' interest due with the bond. The above bonds for twenty years, and are redeemable at the option of the township after five years from date, and are duly registered in the auditor's office at Springfield, Illinois.

ERWIN SANDERS, *T. C.*

PANA, ILLS., *August 5th*, 1873.

54 Issued to Springfield and Illinois Southeastern Railway Company, August 5th, 1873, bonds No. twenty-one to forty, inclusive, for one thousand dollars each, with interest coupons attached, at eight per cent. per annum, payable semi-annually in July and January first, of each year, at New York agency of the State treasurer, the last six months' interest due with the bond. The above bonds for twenty years and are redeemable at the option of the township after five years from date, and are duly registered in the auditor's office at Springfield, Illinois.

ERWIN SANDERS. *T. C.*

PANA, ILLS., *Sept.* 19, *A. D.* 1873.

Issued to the Springfield and Illinois Southeastern R. R. Co., Sept. 19th, 1873, bonds No. 41 to 60, inclusive, for one thousand dollars each, with interest coupons attached, at eight per cent. per annum, payable semi-annually in July and January first, of each year, at the New York agency of the State treasurer, the last six months interest due with the book. The above bonds for twenty years, and are redeemable at the option of the township after five years from date, and are duly registered in the auditor's office at Springfield, Illinois. 55

ERWIN SANDERS,
Town Clerk.

PANA, ILLS., *Nov. 13th*, 1873.

Issued to Springfield and Illinois Southeastern R. R. Co., Nov. 13th, 1873, bonds No. 61 to 80, inclusive, for one thousand dollars each, with interest coupons attached, at eight per cent. per annum, payable semi-annually in July and January first of each year, at the New York agency of the State treasurer, the last six months interest due with the bond. The above bonds for twenty years, and are redeemable at the option of the township after five years from date, and are duly registered in the auditor's office at Springfield, Ills.

ERWIN SANDERS,
Town Clerk.

PANA, ILLS., *Dec. 6th, A. D.*, 1873.

Issued to Springfield and Illinois Southeastern R. R., Dec. 6th, bond No. 81 to 100, inclusive, for one thousand dollars each, with interest coupons attached, at eight per cent. per annum, payable semi-annually
56 in July and January first of each year, at the New York agency of The State treasurer, the last six months interest due with the bonds. The above for twenty years, and are redeemable at the option of the township after five years from date, and are duly registered in the auditor's office at Springfield, Illinois.

ERWIN SANDERS, *T. C.*

STATE OF ILLINOIS,
Christian County, Town of Pana:

I, T. D. Kelligar, clerk of the town of Pana, do hereby certify that I have carefully examined the records of the town of Pana, now in my possession, and that the foregoing is a true and correct transcript of all of said record that relates in any manner to the voting of and issuing of one hundred thousand dollars of bonds and coupons to the Springfield and Illinois Southeastern Railway Company.

T. D. KELLIGAR,
Town Clerk.

(Endorsed:) Filed June 14, 1882. J. A. Jones, clerk.

57 And afterwards, to wit, on Tuesday, the 20th day of June, at the June term of said court, in the year last aforesaid (1882), the following further proceedings were had in said court in said cause and entered of record, to wit:

Finding and judgment for plaintiff.

JAMES H. BOWLER AND ISAAC H. MERRILL
vs.
TOWN OF PANA.
} 6270. Assumpsit.

This day come as well the plaintiffs, by Messrs. Sanders and Williams, their attorneys, as the defendant, by Messrs. Henry, Cook, and Lord, its attorneys, and the issue joined, by consent is tried by the court; a jury being waived, and the court having heard the evidence and argument of counsel finds the issue for the plaintiffs, and assesses their damages to the sum of seven thousand two hundred and seventy-two dollars and two cents.

It is therefore ordered and adjudged by the court that the plaintiffs recover of the defendant the said sum of seven thousand two hundred and
seventy-two dollars and two cents, their damages aforesaid assessed,
58 together with the sum of sixty-six dollars and thirty-five cents, their
costs and charges by them about their suit in this behalf expended,
and that execution issue therefor.

Special findings of court.

The court specially finds and makes the same a part of the record in this case the following facts:

1st. The Springfield & Illinois Southeastern Railroad Company was created by the consolidation of the Pana, Springfield & Northwestern Railroad Company and the Illinois Southeastern Railroad, and that both of the charters of the said companies are referred to and made a part of this finding.

2nd. That a petition was presented to the town clerk, signed by more than twenty legal voters, asking the said town clerk of Pana Township to order an election to be held on the 30th day of April, A. D. 1870, to determine whether said township would donate to the Springfield & Illinois Southeastern Railroad in the sum of one hundred thousand dollars, in
bonds to become due in twenty years from date, or, at the option of
59 the township, five years from date, interest at the rate of eight per
cent. per annum, interest payable semi-annually.

3d. The court further finds from the evidence that upon the thirtieth day of April, A. D. 1870, an election was held in said township, in pursuance of said petition and notice given according to law, presided over by a moderator and town clerk, and that no election was held on that day or at any other time in said township in pursuance of said petition and notice, presided over by the supervisor, assessor, and collector, referring to this issue of bonds. The court further finds from the evidence, that in the spring, summer, and fall of the year 1873 the supervisor and town clerk, in pursuance of said election, held and presided over by said moderator and town clerk, and without any other authority of law than the above election and the charters and amendments above referred to, issued one hundred bonds of the denomination of one thousand dollars each, bearing interest at the rate of
eight per cent. per annum, interest payable semi-annually, said bonds
60 to become due and payable, at the option of the township, in five
years or in twenty years; and that the coupons offered in evidence
are the coupons attached to said bonds, and are now, and were before the commencement of the suit, held and owned by the plaintiffs.

4th. The court further finds from the evidence that in the year 1876, the town of Pana, John C. Hagler, Nelson Warren, and D. E. Bogue filed a bill in behalf of themselves and all the other tax-payers in the township in the Christian County circuit court against Chas. E. Lippincott, auditor of public accounts of the State of Illinois, Thomas A. Ridgway, treasurer of the State of Illinois, Amos A. Rhodes, treasurer of Christian County, Illinois, William H. Kirkwood, county clerk of Christian County, Illinois, William Tribbit, town collector of the town of Pana, H. N. Schuyler,

William Eugene Hayward, John Vidder, William Houston, and the unknown holders and owners of said bonds and coupons issued by the town
of Pana as aforesaid. And at the March term of the circuit court
61 the said Schuyler, Hayward, Vidder, and Houston, appeared and
answered to said bill, and moved the court to dissolve an injunction
which had before that time been issued in said cause.

That afterwards at the August term of said court a decree was entered in said court dissolving said injunction and dismissing said bill, from which said decree an appeal was taken by complainants to the appellate court, and that said cause was heard by said court at its November term, 1877, and that said appellate court reversed the decree of the circuit court dissolving said injunction and dismissing said bill, and remanded said cause, with directions to the circuit court to grant the prayer of complainant's bill, which said order of said appellate court is in the words and figures following, to wit:

A.—Final order of appellate court reversing decree of circuit court.

STATE OF ILLINOIS,
Appellate Court, Third District, ss:

At an appellate court of the third district, begun and held on Tuesday,
the 20th day of November, in the year of our Lord one thousand
62 eight hundred and seventy-seven, to wit:

Present, Chauncey L. Higbee, presiding justice; Oliver L. Davis, justice; Lyman Lacey, justice.

THE TOWNSHIP OF PANA, JOHN C. HAGLER, Nelson Warren, and D. E. Bogue
vs.
CHARLES E. LIPPINCOTT, AUDITOR OF PUBLIC accounts of the State of Illinois; Thomas A. Ridgway, treasurer of the State of Illinois; Amos A. Rhodes, treasurer of Christian County, Illinois; William A. Kirkwood, county clerk of Christian County, Illinois; William Tribbit, town collector of the town of Pana; H. N. Schuyler, William E. Hayward, John Vedder, Wm. Houston, and the unknown holders and owners of bonds and coupons issued by town of Pana.
} Appeal from Christian.

On this day come again the said parties, and the court having dilligently
examined and inspected, as well the record and proceedings afore-
63 said as the matters and things therein assigned for error, and being
now sufficiently advised of and concerning the premises, are of
opinion that in the record proceedings aforesaid and in the rendition of
the decree aforesaid there is manifest error:

Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the decree of the circuit court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court with directions to grant the prayer of the bill. And it is further considered by the court that the said appellants recover of and from the said appellees cost by them in this behalf expended, and that they have execution therefor.

I, Geo. W. Jones, clerk of the said appellate court, third district, do hereby certify that the foregoing is a true copy of the final order of the said appellate court in the above-entitled cause, of record in my office.

In testimony whereof I have hereunto set my hand and affixed 64 the seal of the said appellate court, at Springfield, this 18th day of November, in the year of our Lord one thousand eight hundred and eighty-one.

[L. S.] GEO. W. JONES,
Clerk Appellate Court, 3d District.

(Endorsed:) Filed June 20th, 1882. J. A. Jones, clerk.

5th. The court further finds from the evidence that afterwards the defendants appealed from the decision of the appellate to the supreme court of Illinois, and that said supreme court affirmed said decision of the appellate court, which said decision of affirmance is reported in volume ninety-two of the Illinois Report.

6th. The court further finds from the evidence that a final decree was entered at the November term of the Christian circuit court, A. D. 1879, in pursuance of the order and mandate of said appellate court; a 65 certified copy of which said decree is in the words and figures following, to wit:

B.—Final decree of Christian circuit court.

UNITED STATES OF AMERICA,
State of Illinois, Christian County, ss.

In circuit court, November term, A. D. 1879.

Pleas before the honorable Jesse J. Phillips, a judge of the fifth (5th) judicial circuit of the State of Illinois, and a presiding judge of the circuit court of Christian County, in the State aforesaid, and at a term thereof begun and held at the court-house in the town of Taylorville, in said county, on the third Monday (being the 17th day) of November, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the fourth.

Present, honorable Jesse J. Phillips, a judge of the 5th judicial circuit of the State of Illinois; Vincent E. Foy, State's attorney; Addison L. Clark, sheriff.

Attest:

JOSIAH A. HILL, *Clerk.*

66 *Decree.*

IN THE MATTER OF THE TOWN OF PANA ET AL.
vs.
CHARLES E. LIPPINCOTT ET AL.
} Bill for injunction, &c.

And whereas, to wit, on the 17th day of December, A. D. 1879, it being one of the regular days of the term of court aforesaid, and same officers present as on the first day of the term, the following decree was had and entered of record in words and figures following, to wit:

THE TOWN OF PANA ET AL.
vs.
CHARLES E. LIPPINCOTT ET AL.

Now, to wit, on this day of November, A. D. 1879, comes this cause on again to be heard upon the bill, answer, mandate of the appellate *and* court. And it appearing to the court that all of the defendants were duly served with process and notified by publication of the pendency of said bill in due form of law, in accordance with the requirements of the statute in
such case made and provided, and were amenable to the jurisdiction
67 of the court, and were by said court ruled to answer, and that the
said H. N. Schuyler, Wm. E. Hayward, John Vidler, & William
Houston, holders of bonds to the amount of, to wit, dollars, together with the accompanying coupons upon said bonds, amounting, to wit, dollars, answered said bill; and it further appearing to the court from the bill and answer that the bonds and coupons aforesaid were issued subsequent to the second day of July, A. D. 1870, to wit, twenty of said bonds with accompanying coupons were issued on the 28th day of June, A. D. 1873; twenty of said bonds with accompanying coupons on the 3d day of August, A. D. 1873; twenty of said bonds with accompanying coupons on 19th day of September, A. D. 1873; twenty of said bonds with accompanying coupons on the 13th day of November, A. D. 1873, and twenty of said bonds with accompanying coupons on the 6th day of December, A. D. 1873, making in the aggregate one hundred thousand dollars of bonds, with interest coupons at eight per cent., payable semi-an-
nually on the first days of July and January each year, said bonds
68 to become due and payable in twenty years or, at the option of the
township, in five years.

It further appearing to the court from the answer of said defendants, as well as from the allegations of said bill and the recitals in said bonds, that said bonds and coupons were issued by the supervisor and town clerk of said township in compliance with the vote of the legal voters thereof, at an election held on the 30th day of April, 1870, by virtue of authority conferred by an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company, approved February 25th, 1867, and act amendatory thereof, approved February 24th, 1869, and in accordance with the provisions of an act of said general assembly entitled "An act to fund and provide for the payment of said sum of money and accruing interest thereon."

It further appearing to the court that the act to incorporate the Illinois Southeastern Railway Co., approved February 25th, 1876, conferred no
power upon said township to vote donation and issue bonds in
69 payment thereof, and that the act amendatory thereof, approved
February 24th, 1869, conferred no authority upon said township to
make donation and issue its bonds until the same should be voted for at a legal election held and conducted and returns thereof made as general elections provided by law in this State.

It further appearing to the court from the bill and answer that the election aforesaid held on the 30th day of April, 1870, was not held by the supervisor, assessor, and constable, nor was the same held, conducted, and returns thereof made as general elections provided by law in this State, and as required by said amendatory act; that on the contrary that said pretended election was held, conducted, and returns thereof made as a town meeting, and said pretended election, instead of being presided over by the supervisor, assessor, and collector, the officers authorized and empowered to, said election was held and presided over by a moderator, said moderator having no jurisdiction, warrant, or authority to hold said election and to make returns thereof as required by law.

70 It further appearing to the court that said township had no authority to issue said bonds by virtue of the charter of the Pana, Springfield & Northwestern Railroad Co., or by virtue of any amendatory act thereof.

It further appearing to the court that because of the premises aforesaid, that said township, on the 2d day of July, 1870, was inhibited from issuing bonds by virtue of section 2nd of article 14 of the constitution of 1870; said section not being of the character mentioned in the proviso to said section two of article fourteen of the constitution aforesaid, only saving and reserving the right of municipalities to make subscription where the same had been authorized under existing laws by a vote of the people of such municipality prior to such adoption.

It further appearing to the court from the bill and answer that the questions presented by said bill and answer required a construction of the statutes and laws of the State of Illinois, under which the said Springfield & Illinois South-
eastern Railway Co. was incorporated, and under which the defend-
71 ants to said bill claimed authority to issue said bonds, and sec-
tion two of article fourteen of the constitution aforesaid, and that the said acts of incorporation, amendments thereto, and the constitution aforesaid having been construed court, and there is no authority to make said donation, issue said bonds, and levy a tax upon the taxable property of said township for the payment thereof, and that said bonds and coupons were issued by the supervisor and town clerk without warrant or authority of law. It is therefore ordered, adjudged, and decreed by the court that the injunction heretofore issued in this cause be and the same is hereby made perpetual, and that said defendants holding said bonds and those that have acquired said bonds pending the hearing of this bill be and are hereby perpetually enjoined, under the pain of being adjudged in contempt of the decree of this court, from in any manner selling, negotiating, or transferring said bonds and coupons, or any or either of them,
or from suing or attempting to sue upon said bonds or coupons, or
72 any or either of them, or from in any manner claiming, pretending,
or insisting either by themselves, their agents, or attorneys in any court of law or equity or elsewhere, or in any manner whatever, that said township is liable upon said bonds.

It is further ordered, adjudged, and decreed by the court that said bonds are void, and that the same shall be held and esteemed for naught, and that the registration of said bonds in the office of the auditor of public accounts of the State of Illinois be, and the same is hereby, declared to be null and void, and said auditor of public accounts is required to cancel and annul said registration, and he and his successors in office perpetually enjoined

from levying, attempting to levy, directing, or attempting to direct the levy of a tax with which to pay said bonds and coupons, any or either of them. It is further ordered, adjudged, and decreed by the court that the county clerk of the county of Christian and State of Illinois is perpetually enjoined from extending any tax upon the tax-books of said township of
Pana aforesaid, without any reference to the authority by which the
73 same is directed to be extended for the payment of said illegal bonds
and coupons, under pain, he and his successors in office, of being
adjudged in contempt of the process of this court.

It is further ordered, adjudged, and decreed by the court that the collector of taxes of the town of Pana aforesaid and the treasurer of the county of Christian aforesaid, they and their successors in office, under pain of being adjudged in contempt of the decree of this court, be, and are hereby, perpetually enjoined from collecting, or attempting in any manner to collect, any tax whatever off the taxable property of said township for the payments of said illegal bonds and coupons, any or either of them.

It is further ordered, adjudged, and decreed by the court that the auditor of public accounts of the State of Illinois draw his warrant in favor of W. J. Henry, one of the solicitors of complainants, upon the treasurer or treasury of said State for whatever amount of money may be in said treasury credited to said township on account of said illegal bonds and
coupons, and that said auditor take the receipt of the said Henry
74 therefor, and that said treasurer, upon the presentation of said war-
rant by the said Henry, or his endorser, pay the same, and that
said payment shall be held and adjudged to be a sufficient accounting therefor.

It is further ordered, adjudged, and decreed by the court that the treasurer of the county of Christian and State of Illinois, he or his successor, pay over to the said W. J. Henry, one of the solicitors of said complainants, whatever money may be in the hands of said treasurer, or in the hands of his successors in office, collected off the tax-payers or the taxable property of the township of Pana aforesaid, for the purpose of paying interest upon said bonds, or for the purpose of paying said illegal bonds or coupons, or any or either of them; and that said treasurer, or his successors aforesaid, take the receipt of the said Henry therefor, which is hereby declared to be a sufficient accounting therefor.

It is further ordered, adjudged, and decreed by the court that said defendants, and each and every of them, within five days after being served
with a copy of this decree, by reading, shall surrender said bonds
75 and coupons so held by them, under pain of being adjudged in con-
tempt of the decree of this court, to the supervisor of said town-
ship, whose duty it shall be to burn and destroy the same.

It is further ordered, adjudged, and decreed by the court that said defendants, viz, pay the costs of this proceeding, and that execution issue therefor.

It is further ordered, adjudged, and decreed by the court that this decree is final, except that said complainants are at liberty hereafter to move for such further order or decree against the holders of said bonds and coupons as they may be advised by the court is material or necessary.

I, N. D. Ricks, clerk of the circuit court of Christian County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the final decree in a certain cause pending in said court on the chancery side thereof, wherein The Town of Pana et al. plaintiffs and Charles E. Lippincott et al. were defendants.

76 In witness whereof I have hereunto set my hand and affixed the seal of said court at Taylorville this 12th day of June, A. D. 1882.

[L. S.] N. D. RICKS, *Clerk.*

(Endorsed :) Filed June 20th, 1882. J. A. Jones, clerk.

7th. The court further finds from the evidence that the bill of The Town of Pana and others, complainants as aforesaid, prayed that a preliminary injunction be issued by said circuit court, and that said defendants, and each of them, be perpetually enjoined from levying a tax with which to pay said bonds and coupons, and that said bonds and coupons be declared void, and that said owners and holders of said bonds be perpetually enjoined from in any manner selling, negotiating, or attempting to negotiate and sell said bonds, or suing or attempting to sue on said bonds and coupons, or any or either of them, or from in any manner claiming or pretending or insisting, either by their agents or attorneys in any court of law or equity, or elsewhere, in any manner whatever, that said township is liable upon said bonds and coupons.

77 8th. The court further finds from the evidence that interest was levied and collected and paid by the State treasurer, as provided by law, for three years on the said sum of one hundred thousand of bonds.

9th. The court further finds that all of said bonds are of like tenure and effect, and that one of said bonds is of the tenure following, to wit:

C.—*Copy of bond of town of Pana.*

UNITED STATES OF AMERICA.

STATE OF ILLINOIS. [Vignette.] COUNTY OF CHRISTIAN.

No. 6.] Pana township. [$1,000.

[Registered by auditor of public accounts. Principal and interest collected and paid by the treasurer of State of Illinois.]

Eight per cent. railroad bond.

[Vignette.]

(Across the face in red :) $1,000.

Know all men by these presents that the township of Pana, in the county of Christian and State of Illinois, acknowledges itself indebted to the Springfield and Illinois Southeastern Railway Company, or bearer, in the sum of one thousand dollars, with interest from the date hereof at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July of each year, at the agency of the State

78 treasurer of the State of Illinois in New York City, on the presentation and surrender of the respective interest coupons hereto

attached. The principal of this bond shall be due and payable after five years and within twenty years of the date hereof, at the option of said township, at said agency in the city of New York. This bond is one of a series, amounting to one hundred thousand dollars, issued by said township in compliance with the vote of the legal voters thereof, at an election held on the 30th day of April, A. D. 1870, under and by virtue of the authority conferred by an act of the general assembly of the State of Illinois entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 26th, 1867, and an act amendatory thereof, approved February 27th, 1869, and in accordance with the provisions of an act of said general assembly, entitled "An act to fund and provide for paying the railroad debts of counties, cities, townships, and towns," in force April 16th, 1869. And for the payment of said sum of money and
accruing interest thereon, in the manner aforesaid, the faith of the
79 said township of Pana is hereby irrevocably pledged, as also its
property, revenue, and resources.

(On right and left margin:) 1,000 dollars, 1,000 dollars.

In testimony whereof the said Township of Pana has caused these presents to be signed by its supervisor and countersigned by its clerk this twenty-eighth day of June, A. D. 1873.

ERWIN SANDERS, *Clerk.*
GROVE P. LAWRENCE,
Supervisor.

10th. The court further finds that the coupons sued upon became due and payable as follows, to wit, on the first day of January and of July of each year, from January, 1876, up to the commencement of this suit, and that plaintiffs were the holders of said coupons at the time of the commencement of this suit.

Copy of coupons sued on.

(Across the face in red ink:) 10.
(On margin:) $40.

The Township of Pana, Christian County, Illinois, will pay the bearer forty dollars on the 1st day of January, 1878, at the agency of the State
treasurer, in the city of New York, it being six months' interest on
80 bond No. 2.

GROVE P. LAWRENCE,
Supervisor of said Township.

The Township of Pana, Christian County, Illinois, will pay the bearer forty dollars on the 1st day of July, 1878, at the agency of the State treasurer, in the city of New York, it being six months' interest on bond No. 2.

GROVE P. LAWRENCE,
Supervisor of said Township.

(Across the face in red ink:) 11.
(On margin:) $40.

11th. The court further finds that there was no other evidence upon which to base further findings of the court.

Thereupon the court gave judgment for the plaintiff, to which findings and ruling the defendant excepted and asked that said findings be made a part of the record in this case, which was accordingly done, trial by jury being expressly waived by an agreement in writing.

81 And afterwards, to wit, on Thursday, the 3d day of August, at the said June term of said court, and in the year last aforesaid (1882), the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order allowing writ of error.

James H. Bowler et al.
vs. } Assumpsit.
Town of Pana.

And on motion of defendant, a writ of error to the Supreme Court of the United States is allowed on its entering into bond to the plaintiff in the penalty of $10,000, conditioned as the law directs, with securities to be approved by the court within sixty days from this date.

And thereupon, on the day and year last aforesaid, came the defendant and filed in said clerk's office its bond on writ of error in said cause, which said bond is in the words figures following, to wit:

Bond on writ of error.

82 Know all men by these presents that we, the Town of Pana, in the county of Christian and State of Illinois, and the undersigned as securities of the Town of Pana, are held and firmly bound unto James H. Bowler and Isaac H. Merrell in the penal sum of ten thousand (10,000) dollars, payment of which is well and truly to be made upon the following conditions:

Whereas the above bounden Town of Pana has prosecuted a writ of error in a certain case wherein James H. Bowler and Isaac H. Merrell are plaintiffs and the Town of Pana is defendant, upon which judgment for the plaintiffs was rendered against the defendant for the sum of seven thousand two hundred and seventy-two & $\frac{02}{100}$ (7,272.02) dollars and costs in the circuit court of the United States within and for the southern district of Illinois, from which judgment the said Town of Pana has prayed for and obtained a writ of error to the Supreme Court of the United States to reverse the judgment of said circuit court rendered against said town at the June term of said court, A. D. 1882:

83 Now, the condition of this obligation is such that if the above-named Town of Pana shall well and truly prosecute to effect said writ of error, and answer all damages and costs if it shall fail to make good its writ of error and fail to reverse the judgment aforesaid,

then this obligation to be void; otherwise to remain in full force and effect.

Given under our hands and seals this day of July, A. D. 1882.

The Town of Pana,
By E. S. Davis, *Supervisor*. [seal.]
Anthony Alderson. [seal.]
Stephen Patingale. [seal.]
A. C. Vandewater. [seal.]
J. C. McQuigg. [seal.]
J. A. Smith. [seal.]
Geo. W. Etter. [seal.]
N. B. Chalfant. [seal.]
S. E. Millott. [seal.]
S. F. Winters. [seal.]
T. F. Tunison. [seal.]
S. C. Wagener. [seal.]
Weevle Cly. [seal.]
T. H. McCoy. [seal.]
R. C. Coyner. [seal.]
W. I. Wilson. [seal.]
Nelson Warren. [seal.]
John Beyers. [seal.]
P. M. Nichols. [seal.]
D. M. James. [seal.]
A. B. Corman. [seal.]
A. J. McWilliams. [seal.]
J. W. Austin. [seal.]
Pat. Cullen. [seal.]
D. J. Overholt. [seal.]
L. Schlinbach. [seal.]
O. H. Paddock. [seal.]
S. M. Smith. [seal.]

Approved Aug. 3d, 1882.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed August 3d, 1882. J. A. Jones, clerk.

84 *Clerk's certificate.*

United States of America,
Southern District of Illinois, ss:

In the United States circuit court.

I, John A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and the proceedings thereon had in a certain cause lately pending in said court, wherein James H. Bowler and Isaac H. Merrill, partners as Bowler and Merril, were plaintiffs, and the Town of Pana was defendant, as fully as the same appear on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in the city of Springfield, in said district, this 24th day of August, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh year.

[seal.] J. A. JONES, *Clerk.*

85 *Citation.*

The United States of America, *ss:*

To James H. Bowler and Isaac H. Merrill, partners as Bowler and Merrill, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein The Town of Pana, in Christian County, Illinois, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. S. H. Treat, district judge of the United States for the southern district of Illinois, at the city of Springfield, this 25th day of August, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the 107th year.

S. H. TREAT,
Dist. Judge U. S., South'n Dist. of Illinois.

86 Service of this citation is hereby acknowledged, the 7th day of Sept., A. D. 1882.

GEO. A. SANDERS,
Att'y for Bowler & Merrill.

(Indorsed:) Supreme Court of United States. Town of Pana, plaintiff in error, vs. James H. Bowler et. al., def'ts in error. Citation.

87 *Assignment of errors.*

The plaintiff in error complains that there is error in the foregoing record and proceedings, and that said errors are in these:

1st. The court erred in rendering judgment in favor of the defendants in error, and against the plaintiffs in error.

2nd. The court erred in rendering judgment on the coupons in controversy, there being no authority under the charter of the Springfield & Illinois Southeastern Railroad Company to hold an election and issue bonds to the amount of one hundred thousand dollars.

3rd. The court erred in holding that the pretended election of the 30th of April, A. D. 1870, presided over by a moderator and town clerk, conferred authority upon the supervisor and town clerk to issue bonds and coupons.

4th. The court erred in holding that the plaintiffs were entitled to recover, the bonds not having been legally voted and being issued after the taking effect of section two of article fourteen of the constitution of 1870.

5th. The court erred in rendering judgment for the plaintiff after the bonds were declared null and void by the decree of the circuit court of Christian County, Illinois, entered under a mandate of the appellate and supreme courts of that State.

6th. The court erred in finding for the plaintiff on the coupons in controversy, said bonds having been illegally issued, and there being no evidence that the plaintiffs purchased the same, bona fide, for value before due, the burden of proof being upon the plaintiffs.

7th. The court erred in rendering judgment for the plaintiffs and against the defendants upon the coupons for the sum of seven thousand two hundred and seventy-two dollars and two cents, the amount of said coupons and interest being only six thousand seven hundred dollars and eighty cents ($6,700.80.)

The plaintiff in error therefore asks that the judgment of the circuit court be reversed and that said coupons be declared null and void.

WM. J. HENRY,
Att'y for Plaintiffs in error.

(Indorsement on cover:) No. 1008. The Town of Pana, plaintiffs in error, vs. James H. Bowler and Isaac H. Merrill, partners as Bowler and Merrill. S. Illinois. C. C. U. S. Filed 9th October, 1882.

4023——3

OFFICE SUPREME COURT U.S.
FILED
DEC 16 1882
JAMES H. McKENNEY, Cl

17-5-9

Supreme Court of the United States.

TOWN OF PANA,
vs.
JAMES H. BOWLER
AND
ISAAC H. MERRILL,
} ERROR TO SOUTHERN DISTRICT OF ILLINOIS.

——No. 1008.——

Abstract and Brief for Plaintiff in Error.

W. J. HENRY,
FOR PLAINTIFF IN ERROR.

AMERICAN HOME CO., Printers, Kansas City, Mo.

ABSTRACT.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

October Term, A. D.

TOWN OF PANA,
vs.
JAS. H. BOWLER and MERRILL. } **Err**
Dist

2 2

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This is an action of assumpsit brought by Bowler and Merrill against the Town of Pana to recover upon certain coupons issued by the Supervisor, and Town Clerk of said Town, to the Springfield and Illinois Southeastern Railroad Company, on the

28th day of June, A. D. 1873, as interest on certain bonds, to-wit: Eighteen coupons, due January 1st, 1878; eighteen coupons, due July 1st, 1878; eighteen coupons, due January 1st, 1879; eighteen coupons, due July 1st, 1879; eighteen coupons, due January 1st, 1880; eighteen coupons, due July 1st, 1880; eighteen coupons, due January 1st, 1881; eighteen coupons, due July 1st, 1881; each for forty dollars ($40), said coupons being for interest on eighteen bonds, of the denomination and calling for one thousand dollars each; said bonds being a part of an issue of one hundred thousand dollars of bonds issued by the Town of Pana to the Springfield and Illinois Southeastern Railroad Company, or bearer.

To the declaration the Town of Pana pleaded the general
7 issue, verified by affidavit. The case was tried before Messrs.
J. J. Harlan and Treat, at the June Term, A. D. 1882, who
gave judgment for the plaintiffs, and assessed their damages at
21 the sum of seven thousand, five hundred and seventy-two dollars,
and two cents ($7,572.02).

The judgement is based upon the following special findings which are made a part of the record in this case:

1st. That the Springfield and Illinois Southeastern Railroad
Company was created by the consolidation of the Pana, Spring-
2.2 field and Northwestern Railroad Company and the Illinois South-
eastern Railroad Company; and that both of the charters of said
companies are referred to and made a part of the findings.

2d. That a petition was presented to the Town Clerk signed
22 by more than twenty legal voters, asking the Town Clerk to
order an election to be held on the thirtieth day of April, 1870,

to determine whether said Township would donate to the Springfield and Illinois Southeastern Railroad the sum of one hundred thousand dollars, in bonds to become due in twenty years from date, or, at the option of the Township, within five years from date, interest at the rate of eight per cent. per annum, payable semi-annually.

3d. The Court further finds from the evidence, that, upon the 30th day of April, 1870, an election was held in said Township in pursuance of said petition and notice, presided over by a moderator and Town Clerk, and that no election was held on that day or at any other time in said Township in pursuance of said petition and notice, presided over by the Supervisor, Assessor, and Collector, referring to this issue of bonds. 22

The Court further finds from the evidence that in the Spring, Summer and Fall of the year 1873, the Supervisor and Town Clerk, in pursuance of said election held and presided over by the said moderator and Town Clerk, and without any other authority of law than the above election, and the charters and amendments above referred to, issued one hundred bonds of the denomination of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually; said bonds to become due and payable at the option of the Township in five years, or in twenty years, and that the coupons offered in evidence are attached to said bonds, and are now, and were before the commencement of this suit, held by the plaintiffs. 22

4th. The Court further finds from the evidence that in the year 1876 the Town of Pana, John C. Hagler, Nelson Warren and D. E. Bogue, in behalf of themselves and all the other tax- 22 payers in the Township, filed a bill in the Christian County Circuit Court against Chas. E. Lippincott, Auditor of Public Accounts of the State of Illinois; Thomas A. Ridgeway, Treasurer of the State of Illinois; Amos A. Rhodes, Treasurer of Christian County, Illinois; William H. Kirkwook, County Clerk of Christian County, Illinois; William Tibbett, Town Collector of the Town of Pana; H. N. Schuyler, William Eugene Hayward, John Vidder, Wm. Houston, and the unknown owners and holders of said bonds and coupons issued by the Town of Pana, as aforesaid; and at the March term of the Circuit Court, the said Schuyler, Hayward, Vidder and Houston appeared and answered to said bill, and moved the Court to dissolve an injunction which had before that time been issued in said cause. That afterwards, at the August term of said Court, a decree was entered in said Court, dissolving said injunction, and dismissing said bill; from which said decree an appeal was taken by the complainants to the Appellate Court for the third district of Illinois, and that said cause was heard by said Court at its November term, A. D. 1877, and that said Appellate Court reversed the decree of the Circuit Court dissolving said injunction and dismissing said bill, and remanded said cause, with directions to said Court to grant the prayer of complainants bill, which said order of said Appellate Court is in the words and figures following, to-wit:

"STATE OF ILLINOIS,
APPELLATE COURT,
THIRD DISTRICT."

"At an Appellate Court of the Third District, begun and held on the 20th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, to-wit:

Present, Chauncey L. Higbee, Presiding Justice; Oliver L. Davis, Justice; Lyman Lacy, Justice.

The Township of Pana, John C. Hagler, Nelson Warren and D. E. Bogue,

vs.

Chas. E. Lippincott, Auditor of Public Accounts of the State of Illinois; Thos. A. Ridgeway, Treasurer of the State of Illinois; Amos A. Rhodes, Treasurer of Christian county, Illinois; William H. Kirkwood, County Clerk of Christian county, Illinois; William Tibbett, Town Collector of the Town of Pana; H. N. Schuyler, Wm. E. Hayward, John Vidder, Wm. Houston, and the unknown owners and holders of said bonds and coupons issued by the Town of Pana.

APPEAL FROM CHRISTIAN.

"On this day come again said parties, and the Court having dilligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and the court being now sufficiently advised of and concerning the premises, are of opinion, that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid, the decree of the circuit court in this behalf rendered, be reversed, annulled, and set aside, and wholly for nothing be esteemed, and that this cause be remanded to the circuit court, with directions to grant the prayer of the bill. And it is further considered by the court that the said appellants recover of and from the said appellees costs by them in this behalf expended, and that they have execution therefor."

24 5th. The court further finds from the evidence that afterwards the defendants appealed from the decision of the Appellate to the Supreme Court of Illinois, and that said Supreme Court affirmed said decision of said Appellate Court, which said decision of affirmance is reported in Vol. 92 of the Illinois reports.

24 6th. The court further finds from the evidence that a final decree was entered at the November term of the Christian Circuit Court in the year 1879, in pursuance of the order and mandate of said Appellate Court; which said decree among other things provides:

"TOWN OF PANA, et. al.,
vs.
CHAS. E. LIPPINCOTT, et. al." } DECREE.

"Now, to-wit, on this .... day of November, 1879, comes this cause again on to be heard upon the bill, answer, mandate of the Appellate court; and it appearing to the court that all of the defendants were duly served with process and notified by publication of the pendency of said bill in due form of law, in accordance with the requirements in such case made and provided, and were amenable to the jurisdiction of said court, and were by said court ruled to answer. and that the said Schuyler, Hayward, Vidder and Houston, holders of said bonds, together with the accompanying coupons, answered said bill; and it appearing to the court from the bill and answer that the bonds and coupons aforesaid were issued subsequent to the second day of July, A. D. 1870, to-wit: Twenty of said bonds, with accompanying coupons, were issued on the 28th day of June, 1873; twenty of said bonds, with accompanying coupons, on the third day of August, 1873; twenty of said bonds, with accompanying coupons, on the 19th day of September, 1873; and twenty of said bonds on the 13th of November, 1873; and twenty of said bonds, with accompanying coupons, on the sixth day of December, 1873; with interest coupons at eight per cent., payable semi-annually, on the first day of July and January of each year; said bonds to become due and payable in twenty years, at the option of the Township in five years.

25

It further appearing to the court from the answer of said defendants, as well as from the allegations of said bill, and the recitals in said bonds, that said bonds were issued by the Supervisor and Town Clerk of said Township, in compliance with a vote of the legal voters thereof, at an election held on the thirtieth day of April, 1870, by virtue of authority conferred by an Act of the General Assembly of the State of Illinois, entitled an "Act to Incorporate the Illinois Southeastern Railway Company, approved February 25th, 1867," and an Act amendatory thereof, approved February 24th, 1869, and in accordance with the provisions of an Act of the General Assembly, entitled an Act to provide for the payment of said sum of money and accruing interest thereon.

It further appearing to the court that the Act of February 24th, 1869, conferred no authority upon such Township to make donations and issue bonds, until the same shall be voted for at a legal election held and conducted, and the returns thereof made as general elections, provided by law in this State.

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It further appearing to the court, from the bill and answer, that the election aforesaid, held on the thirtieth day of April aforesaid, was not held by the Supervisor, Assessor and Collector, nor was the same held and conducted and returns thereof made, as general etections provided by law in this State; but on the contrary, that said pretended election was held, conducted, and returns thereof made, as a town meeting; and said pretended election, instead of being presided over by the Supervisor, Assessor and Collector, the officers authorized to hold such election, was held and presided over by a moderator; said moderator having no jurisdiction, warrant, or authority to hold such election, and to make returns thereof, as provided by law.

It further appearing to the court that said Township had no authority to issue said bonds.

It further appearing to the court that because of the premises aforesaid, the said Township on the second day of July, 1870, was inhibited from issuing bonds, by virtue of Section two of Article fourteen of the Constitution of 1870.

It is therefore ordered, adjudged, and decreed by the court that the injunction heretofore issued in this cause be, and the same is hereby made perpetual, and that the said defendants holding said bonds, and those that have acquired said bonds pending the hearing of this bill, be, and are hereby perpetually enjoined, under pain of being adjudged in contempt of this court, from in any manner selling, negotiating, or transferring said bonds, or any or either of them, or from suing or attempting to sue upon said bonds or coupons, or any or either of them, or from in any manner claiming, pretending or insisting, either by themselves, their agents or attorneys, in any court of law or equity, or elsewhere, or in any manner whatever, that said Township is liable upon said bonds.

It is further ordered, adjudged and decreed by the court that said bonds are void, and that the same shall be held and esteemed for naught, and that the registration of said bonds in the office of the Auditor of Public Accounts of the State of Illinois, and his successors in office, is declared to be null and void, and that he and his successors in office be perpetually enjoined from levying, attempting to levy, directing or attempting to direct a levy of a tax with which to pay such bonds or coupons, or any or either of them. 26

It is further ordered, adjudged and decreed by the court that the County Clerk of the County of Christian is perpetually enjoined from extending a tax upon the tax-books of said Township for the payment of said illegal bonds and coupons, under pain, he and his successors in office, of being adjudged in contempt of the process of this court.

It is further ordered, adjudged and decreed by this court that the Collector of Taxes of the Town of Pana aforesaid, and the Treasurer of the County of Christian aforesaid, they and their successors in office, under pain of being adjudged in contempt of the decree of this court, are hereby enjoined from collecting, or attempting to collect in any manner, any tax whatever, off of the taxable property of said Town, for the payment of said illegal bonds and coupons, any or either of them." 27

7th. The court further finds from the evidence that the bill of the Town of Pana and others, complainants, prayed that a preliminary injunction be issued by the Circuit Court, and that said defendants, and each of them, be perpetually enjoined from levying a tax with which to pay said bonds and coupons, and 28 that said bonds and coupons be declared void, and that said owners and holders of said bonds be perpetually enjoined from in any manner selling, negotiating, or attempting to negotiate and sell said bonds, or suing or attempting to sue upon said bonds or coupons, or any or either of them, or from in any manner claiming, pretending or insisting, either by their agents or attorneys, in any court of law or equity, or elsewhere, in any manner whatever, that said Township is liable on said bonds and coupons.

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8th. The court further finds from the evidence that interest was levied and collected and paid by the State Treasurer, as provided by law, for three years, on the said sum of one hundred thousand dollars of said bonds.

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9th. The court further finds from the evidence that all of said bonds are of like tenor and effect, and that one of said bonds is of the tenor following to-wit:

"United States of America,
State of Illinois,
County of Christian."

"No. 6. Pana Township. $1,000.

Eight Per Cent. Railroad Bond.

"Know all men by these presents, that the Township of Pana, in the County of Christian, and State of Illinois, acknowledges itself indebted to the Springfield and Illinois Southeastern Railway Company, or bearer, in the sum of One Thousand Dollars, with interest from the date hereof, at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July of each year, at the agency of the State Treasurer of the State of Illinois, in New York City, on the presentation and surrender of the respective interest coupons hereto attached. The principal of this bond shall be due and payable after five years, and within twenty years of the date hereof, at the option of said Township, at said agency in the City of New York.

This bond is one of a series, amounting to one hundred thousand dollars, issued by said Township in compliance with the vote of the legal voters thereof, at an election held on the 30th day of April, 1870, under and by virtue of the authority conferred by an Act of the General Assembly of the State of Illinois, entitled "An Act to Incorporate the Illinois South-eastern Railway Company," approved February 26th, 1867, and an Act amendatory thereof, approved February 27th, 1869, and in accordance with an Act of said General Assembly, entitled "An Act to Fund and Provide for paying the railroad debts of Counties, Cities, Townships, and Towns," in force April 16th, 1869.

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&
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And for the payment of said sum of money and accruing interest in the manner aforesaid, the faith of the said Township of Pana is hereby irrevocably pledged, as also its property, revenue, and resources.

In testimony whereof the said Township of Pana has caused these presents to be signed by its Supervisor, and countersigned by its Clerk, this twenty-eighth day of June, A. D. 1873.

GROVE P. LAWRENCE, SUPERVISOR.

ERWIN SANDERS, Clerk."

10th. The court further finds that the coupons sued upon became due and payable as follows, to-wit: On the first day of
29 January and July of each year, from January, 1876, up to the commencement of this suit, and that plaintiffs were the holders of said coupons at the time of the commencement of this suit. The court further finds that the coupons sued on are of the tenor following, to-wit:

"The Township of Pana,
Christian County, Illinois.

Will pay to bearer Forty Dollars, on the First day of Jan-
29 uary, 1878, at the agency of the State Treasurer, in the City of New York, it being six months interest on bond No. Two.

Grove P. Lawrfnce, Supervisor."

11th. The court further finds that there was no further evidence upon which to base further findings of the court. There-
30, upon, the court gave judgment to the plaintiff. To which judgment and finding the defendant excepted, and asked that said findings be made a part of the record in this case, which was accordingly done. Trial by jury being expressly waived by agreement in writing.

ASSIGNMENT OF ERRORS.

The Plaintiff in Error complains that there is error in the foregoing records and proceedings, and that said errors are in these :

1st. The court erred in rendering judgment in favor of the Defendants in Error, and against the Plaintiffs in Error.

2d. The court erred in rendering judgment on the coupons in controversy ; there being no authority under the charter of the Springfield and Illinois Southeastern Railroad Company to hold an election and issue bonds to the amount of one hundred thousand dollars.

3d. The court erred in holding that the pretended election of the 30th of April, A. D. 1870, presided over by a moderator and town clerk, conferred authority upon the Supervisor and Town Clerk to issue bonds and coupons.

4th. The court erred in holding that the plaintiffs were entitled to recover ; the bonds not having been legally voted and being issued after the taking effect of Section 2, of Article 14, of the Constitution of 1870.

5th. The court erred in rendering judgment for the plaintiffs after the bonds were declared null and void by the decree of the Circuit Court of Christian County, Illinois, entered under a mandate of the Appellate and Supreme Courts of that State.

6th. The court erred in finding for the plaintiffs on the coupons in controversy, said bonds having been illegally issued.

and there being no evidence that the plaintiffs purchased the same, *bona fide*, for value before due ; the burden of proof being upon the plaintiffs.

32,

7th. The court erred in rendering judgment for the plaintiffs and against the defendants upon the coupons for the sum of seven thousand, two hundred and seventy-two dollars and two cents ($7,272.02), the amount of said coupons and interest being only six thousand, seven hundred dollars and eighty cents ($6,700.80).

The Plaintiff in Error therefore asks that the judgment of the Circuit Court be reversed; and that said coupons be declared null and void.

W. J. HENRY,
Attorney for Plaintiffs in Error.

SECTIONS 9 AND 10 OF THE ACT OF FEBRUARY 26TH, 1867, INCORPORATING THE ILLINOIS SOUTHEASTERN RAILWAY COMPANY.

SEC. 9. Any town in any county under township organization is hereby authorized and empowered to donate to said company any amount, not to exceed thirty thousand dollars: *Provided*, that no such donation by any such town to said company shall be made unless the question of making such donation shall have been first submitted to the legal voters of such town, at an election hereafter to be provided for: And, provided further, that no donation so made, nor any part thereof, nor any interest accruing thereon, or upon any part thereof, shall be paid or become due and payable to said company, until said company or its assigns or employees shall have completed their railroad, or some certain part of such road or its branch as may have been agreed upon by the contracting parties.

SEC. 10. No such election for the purpose of submitting the question of making a donation by any such town authorized by Section 9 of this Act to donate to this company shall be held until the directors of said company shall have filed a proposition to the inhabitants of said town with the County Clerk of the county wherein such town is situate, and a copy of the same with the clerk of said town, and, if there be a newspaper published in said county, said proposition shall be published in full in the same, whereupon it shall be the duty of the clerk of such town to post up printed or written notices of the time and place

of holding such election in at least ten public places in such town, together with a copy of such proposition, at least twenty days before the day for holding such election; at which election the legal voters of such township shall vote for or against such proposition; and if a majority of all the votes cast be for such proposition, the trustees of such town shall so certify the same to the Clerk of the County Court of the county wherein the town is situated, and such county clerk shall, upon application of the company, after the donation so voted by any such town shall have become due and payable, under the terms and conditions of the proposition under which said election was rendered, compute and assess upon all the taxable property in said town an amount sufficient to pay such donation, or any part or installment of the same so then being due and payable; which taxes so assessed shall be collected as other taxes; and the taxes so collected shall be paid to the treasurer of said company. And the election herein provided for shall be held, canvassed, and returned as other regular town elections.

SECTIONS 10 AND 12 OF AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE ILLINOIS SOUTH-EASTERN RAILWAY COMPANY," IN FORCE FEBRUARY 24, 1869.

"That any village, city, county or township organized under the township organization law, or any other law of this State, along or near the route of said railway or its branches or that are in any wise interested therein, may, in their corporate capacity, subscribe to the stock of said company or make donations to said company, to aid in constructing and equipping said railway: *Provided*, that no such subscriptions or donations shall be made until the same shall be voted for, as hereinafter provided. That whenever twenty legal voters of any such city, village, county or township shall present to the clerk thereof a written application requesting that an election shall be held to determine whether such village, city, county or township shall subscribe to the capital stock of said company or make a donation thereto, to aid in building or equipping said railway, stating the amount, and whether to be subscribed or donated, and the rate of interest and times of payment of the bonds to be issued in payment thereof, such clerk shall receive and file such application, and shall immediately proceed to post written or printed notices, calling an election to be held by the legal voters of such village, city, county or township, which notice shall be posted in ten of the most public places of such village, city, county or township, for thirty days preceding an election; and said notices shall state fully the object of such election, and such election shall be held and conducted and returns thereof made as in general elections provided by law in this State, and as provided by the charters of any such village or city: *Provided*, that at any election held under the provisions of this act it shall not be necessary to cause a registration of the voters of such villages, cities, counties or townships; and if a majority of the votes cast at such election shall be in favor of such subscription or donation, then the corporate authorities of such village, city, county or township organized under the township organization laws of this State, the supervisors of such township shall subscribe to the capital stock of said company or donate thereto, as shall have been determined at such election, the amount so voted at such election and shall issue the bonds, with interest coupons attached, of such village, city, county or township to said railway company, in such denominations as said railway company may designate—said bonds drawing interest at a rate not exceeding ten per cent. per annum, and the interest on said bonds to be paid semi-annually, and said bonds to be paid in twenty years from the date of their issue, with the privilege reserved to the said villages, cities, counties or townships of paying said bonds at any time after five years from the date of their issue; and said bonds to be signed, in case of a village by the chairman of the board of trustees thereof, in case of a city by the mayor thereof, in case of a county by the county judge or the chairman of the board of supervisors thereof, and in case of a township by the supervisor thereof; and in all cases to be countersigned by the clerk of said village, city, county or township. And any such village, city, county or township subscribing or making donation to such railway, as aforesaid, shall by its proper corporate authorities, annually thereafter, levy and collect a sufficient tax on its assessed property to pay the interest on its bonds issued as aforesaid as the interest becomes due, and provide in due time to pay the principal at maturity."

"That when payment of subscription to the capital stock of said company, or payments for donations to said company have been or shall be made by villages, cities, counties or townships, in bonds of such villages, cities, counties or townships, under any act authorizing such subscription or donation to be made, all such bonds issued or negotiated by the proper authorities of such villages, cities, counties or townships, and appearing regular on the face thereof, shall in the hands of said company or any other *bona fide* holder thereof, be deemed and taken in all courts and elsewhere, as *prima facie* evidence of the regularity of everything required by the several acts in relation to the issuing of said bonds or by any other act to be done preliminary to the issuing and negotiation of said bonds."

W. J. HENRY

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Without express or statutory authority, municipal corporations cannot legally issue bonds to aid in the construction of a railway.

Town of Coloma vs. Eaves, 92 U. S., 484.

Marsh vs. Fulton County, 10 Wall., 676.

Municipal corporations being created for the purposes of government, cannot issue bonds without express legislative authority.

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W. J. HENRY,

FOR PLAINTIFF IN ERROR.

Without constitutional or statutory authority, municipal corporations cannot legally issue bonds to aid in the construction of a railway.

Town of East Oakland vs. Skinner, 94 U. S., 258.

Marsh vs. Supervisors, 10 Wall., 676.

Municipal corporations, being created for the purposes of government, cannot issue bonds without express legislative authority.

Marshall County vs. Cook, 38 Ill., 49 and 50.

THE LIMITATION CONTAINED IN THE CHARTER, OF THIRTY THOUSAND DOLLARS.

Section Nine, of the Act of February 26th, 1867, provides that townships are empowered to donate to the Illinois Southeastern Railway Company, any amount not exceeding thirty thousand dollars.

Private Laws of 1867, Vol. 2, p. 750.

This section of the charter limits the authority to donate to thirty thousand dollars, and, unless it is repealed by the amendatory act of 1869, it is still in full force and applicable to the bonds and coupons in controversy.

Section 10 of the amendatory act is silent as to the amount that may be donated, and being silent, there is no repugnancy, in regard to the amount, between the two acts.

There is no express repeal; and repeals by implication are not favored.

Woods vs. U. S., 14 Curtis, 336.

McCord vs. Smith, 1 Black., 470.

Bowen vs. Lease, 5 Hill, 225.

King vs. Downs, 3 T. R., 567.

Dwarris on Statutes, 674.

Golden vs. Buck, 15 East., 371.

County of Clay vs. Society for Savings, 104 U. S., 579.

The ninth section of the charter conferred no authority upon the township to make donations and issue bonds, but it restricted the donation to a money donation, to be raised by taxation and paid directly to the corporation. There is no implied authority in the act of 1867 for issuing commercial paper of any kind.

Tabor vs. Canning, *et al*, 8 Metcalf, 458.

Webber vs. Williams College, 23 Pick., 302.

Rossiter vs. Rossiter, 8 Wend., 494.

Tappan vs. Bailey, 4 Metcalf, 539.

Paige vs. Stone, *et al*, 10 Metcalf, 168.

Smith vs. Inhabitants of Chesire, 13 Gray, 318.

The amendatory act of 1869 authorized the corporate authorities of the township to make donations or subscription and issue bonds; provided that they were authorized by a vote of the people had at an election which was held and conducted as a general election. Under Section Ten of the original charter, the election was required to be held as a town election. In respect to holding and conducting the election there is a manifest repugnancy between the two acts, and, of course, the last act must prevail to the extent of such repugnancy, and no further.

ARE THE BONDS VALID TO THE EXTENT OF THIRTY THOUSAND DOLLARS?

The bonds on their face each recites that "this is one of a series amounting, in the aggregate, to one hundred thousand dollars." The mere execution of the bonds by the supervisor and town clerk, who are the ministerial officers of the township, can confer no validity on the bonds, unless they were authorized by the legal voters of the municipality.

Williams vs. Town of Roberts, 88 Ill., 11.

The Supervisor and Town Clerk, neither separately nor associately, are the corporate authorities of the Town.

Marshall vs. Stilliman, 61 Ill., 218.

Elmwood vs. Marcy, 92 U. S., 292.

This brings us to the consideration of the question: Could the Township, in view of the limitation contained in the charter, vote to authorize the Supervisor and Town Clerk to issue bonds to the amount of one hundred thousand dollars; and, if they could not, would their attempt to issue bonds to the amount of one hundred thousand dollars be a sufficient warrant to justify an issue of bonds to the amount of thirty thousand dollars? We insist that it would not.

Story on Agency (6th Ed.), Sections 165-6-7.

Tucker vs. Gill, 61 Ill., 236.

Alexander vs. Alexander, 2 Vesey, 644.

Roe, on the Demise, etc., vs. Prideaux, *et al*, 10 East., p. 158.

Where a party authorizes an agent to make a certain contract for him, it by no means follows that the agent may make another and different contract and yet bind the principal.

Taylor vs. Merrill, 55 Ill., 52.

Bradley vs. Ballard, 55 Ill., 414.

"The Supervisor and Town Clerk have no other powers than such as were authorized by the charter and the vote of the Township. The authority being a matter of law and of public record, it may be presumed that the appellant knew the extent of the agent's authority in the premises."

Denning vs. Smith, 3 John., Ch., 332.

Marshall County vs. Cook, 38 Ill., 44.

Dart vs. Hercules, *et al.* 57 Ill., 446.

It is a general rule that if a special agent whose authority is conferred by statute or order of the court, acting in the capacity of a public officer, with limited and well-defined powers, acts outside of the authority conferred, the principal will not be bound by his acts.

Ibid, 57 Ill., 449.

Keys vs. Westford, 17 Pick., 273.

Nixon vs. Hyersott, 5 John., 58.

See also Floyd Acceptances, 7 Wall., 666.

If the Supervisor and Town Clerk were the agents of the Township in issuing the bonds, to what extent were they authorized to issue bonds to the amount of one hundred thousand dollars, or only to the amount of thirty thousand? If they issued bonds to the amount of only thirty thousand dollars, they must, of necessity, disregard the vote which attempted to authorize the issuing of one hundred thousand dollars of bonds, and by so doing, predicate their right upon the charter, and not upon the vote of the people. Again, if they could only issue bonds to the amount of thirty thousand dollars, but instead thereof, issued to the amount of one hundred thousand dollars, *should the bonds be scaled down pro rata, or should the first thirty thousand be held valid, and the remaining seventy thousand be held void?*

The mere suggestion of the difficulty shows the absurdity of the proposition. There is no priority, in point of authority, from the electors of the Township, and if any is to be recognized, it results from a mere ministerial duty and power of the Supervisor and Town Clerk.

The power certainly cannot be well executed, where there is a limitation of thirty thousand dollars, by the issuing of one hundred thousand dollars of bonds.

THE ELECTION WAS REQUIRED TO BE HELD AS A GENERAL ELECTION.

The Tenth Section of the Amendatory Act required that the election should be held, conducted, and returns thereof made, as a general election. There was no law to empower a Township to vote such a donation at a Town Meeting, presided over by a Moderator and Town Clerk.

In the case of the People vs. Town of Santa Anna, Mr. J. Lawrence delivering the opinion of the court, said that the election had was like a judicial proceeding where there was no jurisdiction. There was no vote of the people, in the manner required by law ; there was no power conferred by the election, and it was a nullity.

People vs. Santa Anna, 67 Ill., 57.

People vs. Town of Laena, 67 Ill., 66.

Lippincott vs. Town of Pana, 92 Ill., 26.

THE EFFECT OF THE NEW CONSTITUTION (1870) ON THE VOTE.

The saving clause to Section 2, of Article 14, of the Constitution, provides that "the adoption of this Article shall not be construed as affecting the right of any such municipality to make such subscription, where the same have been authorized under existing laws, by a vote of the people of such municipality prior to such adoption."

The inhibition is general, and unless the right is saved under the proviso, *all authority is taken away.*

Moultrie County vs. Rockingham Ten Cent Savings Bank, 92 U. S., 631.

Louisville vs. Savings Bank, 104 U. S., 469.

Lippincott vs. Pana, supra.

The case last cited decided directly upon this identical issue of bonds, and upon the same state of facts as are now presented in the findings of the court, that these bonds had not been authorized by a vote of the people, prior to the taking effect of the constitution, and that, therefore, all power and authority had been taken away.

See also Jackson County vs. Brush, 77 Ill., 59.

Middleport vs. Etna Life Insurance Co., 82 Ill., 562.

At the time the bonds in controversy were issued, the law, as settled by the Supreme Court in the case of the People vs. Town of Santa Anna, supra, was directly applicable, and was in force, giving construction as to what was meant by a general election conducted as required by law. The same rule of construction before the issuing of the bonds was adhered to in the case of the People vs. Town of Laena, 67 Ill., 65.

The opinions in both of these cases were filed at the January Term, 1873, and *the bonds in controversy were not issued until the Summer and Fall thereafter*.

So that the law, as settled by these cases, became and was *the law of the bonds,* and is conclusive of the question that the election conferred no authority whatever upon the Supervisor and Town Clerk to make a donation and issue the bonds.

The rule of decision on this class of questions, and on questions of similar import in the State of Illinois, has been uniform from the first organization of the Government until the present time.

Supervisors Schuyler County vs. People, 25 Ill., 181.

Clark vs. Board of Supervisors, 27 Ill., 305.

Forcing County vs. Town of Batavia, 61 Ill., 99.

In Harding County vs. R. R. Co., 65 Ill., 92, the Court says that the Supervisors, when they exercised the functions given by statute, the power granted must not only be clearly conferred, but strictly pursued. If the mode prescribed for carrying into effect the right to issue the bonds is not complied with in every material manner, then the bonds are void.

"The public," says the Supreme Court of the United States, "can only act through its authorized agents, and it is not bound until all who are to participate in what is to be done, have performed their respective duties. . . . . . .
The authority of a public agent depends upon the law as it is when he acts. He has only such powers as are specifically granted, and he cannot bind his principal under powers that have taken away. The question is one of authority of him who attempts to bind another. Every person who deals with, or through an agent assumes all the risks of a lack of authority in the agent to do what he does. Negotiable paper is no more protected against this inquiry than any other."

Anthony vs. County of Jasper, 101 U. S., 693.

McGarrahan vs. Mining Co., 96 U. S., 316.

Bailey vs. Tabor, 5 Mass., 285.

The true rule is that the want of corporate power or the want of authority cannot be supplied by their unauthorized acts or representations.

Clark vs. Des Moines, (Dillon, J., opinion,) 6 Am., Law Register, (N. S.) 146.

Gould vs. Town of Sterling, 23 N. W., 464.

Treadwell vs. Commissioners, 11 O. St., 183.

No representation can establish the fact of agency. If a person who is not in fact authorized, represents that he has power to execute a promissory note for another, the instrument, so far as the supposed principal is concerned, is utterly void. The negotiability of the note would have no effect upon the question.

1 Am. Law Register, (N. S.) 290.

Hull & Argalls vs. Marshall County, 12 Ia., 162.

In the case of the County of Jasper vs. Ballou, 103 U. S., 750, the Court says: "The only objection is that there was a mistake in carrying it (the law) into execution. The election was called by the wrong agents; the County Court should have brought the people together, and not the board of supervisors. This, if there had been nothing more, would, under the rulings of the highest Court of the State, made long before the vote was taken render the bonds invalid.

Supervisors of Schuyler Co. vs. the People, 25 Ills. 181.

The power having been conferred on the County Court, it could alone act in carrying out the power. No other functionary, party or individual, could act for want of power.

Geddis vs. Richland Co., 92 Ills., 119.

Lippincott vs. Town of Pana, 92 Ills., 24.

Schuyler Co., vs. People, 25 Ills., 181.

Marshall Co., vs. Cook, 38 Ills., 45.

Clark vs. Supervisors, 27 Ills., 305.

Force vs. Batavia, 61 Ills., 99.

Harding vs. Rock Island & St. L. R. R. Co., 65 Ills., 90.

THE EFFECT OF THE RECITALS IN THE BONDS.

If we are correct in maintaining that the $30,000 is a limitation upon the township authorities, then the bonds disclose the infirmity or want of power upon their face.

Each recites that " this bond is one of a series amounting to one hundred thousand dollars," issued by said township. Independent of this however, it is clear that where there is an entire absence or want of authority, instead of a defective execution of an existing power, false recitals will not aid.

Buchanan vs. Litchfield, 101 U. S., 287.

In the last case cited a distinction was made between a recital that the bonds were issued under the authority of the statute, and in pursuance of a city ordinance, and a recital that they were issued under the statute and in compliance with the constitution. In the case of Marsh vs. Fulton Co., 10 Wallace, 676, the court uses this language: "This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instrument might, for such reason, be taken without special inquiry into their validity.

It is a case where the power to contract never existed; where the instrument might, with equal authority, have been issued by any citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had been so far followed by them as to justify the issuing of the bonds. The authority to contract must exist before any protection, as an innocent purchaser, can be claimed by the holder. This is the law even as respects commercial paper alleged to have been issued under a delegated authority, and is stated in the case of Floyd Acceptances, 7 Wallace, 676."

When the question of the legality of these bonds was before the Supreme Court of the State for adjudication, the court, with reference to recitals, uses this language. "It is the long established rule of this court, that, where there is an entire absence of power, as distinguished from a defective execution of power, then the recitals of those, invested with the ministerial duty of issuing municipal bonds, will afford no protection, even to *bona fide* holders for value, of such bonds.

Lippincott vs. Town of Pana, supra.

Williams vs. Town of Roberts, 88 Ills., 13.

Force vs. Town of Batavia, supra.

Schuyler Co., vs. Farwell, 25 Ill., 181.

Marshall Co., vs. Cook, Supra.

Amendatory Act, Incorporating Ill., S. E. R. R. Co.,

Sec. 12. Private Law of 1869. Vol. 1. P. 314.

THE STATE DECISION UPON THE LEGALITY OF THE BONDS.

If there is any question firmly, and uniformly settled, it is that the decision of the State Courts upon the construction of their local statutes and constitution, must govern the decisions of the Federal Court, except where the State Courts have rendered the decision, upon the faith of which rights have been acquired, and subsequently have changed the ruling.

South Ottawa vs. Perkins, 94 U. S., 267.

Township of Elmwood vs. Marcy, 92 U. S., 289.

Town of East Oakland vs. Skinner, 94 U. S., 257.

Douglas vs. Pike Co., 101 U. S., 686.

Life Ins, & Trust Co. vs. DeBolt, 16 How., 416.

Supervisors vs. U. S., 18 Wall., 71.

Boyd vs. Alabama, 94 U. S., 645.

Fairfield vs. County of Gallitin, 100 U. S., 47.

Nesbitt vs. Sheldon, 7 How., 812.

Walker vs. State Harbor Comrs., 17 Wallace, 648.

These decisions settle the question beyond controversy that the Federal Courts will follow the decisions of the State Courts, in giving construction to their own constitution and laws. In view of the fact that the only questions in the case of Lippincott *et al* vs. Town of Pana, are questions involving the construction of the charter of the Illinois Southeastern R. R. Co., and the effect of the new constitution thereon, it follows that the decision on principle must control the decision here. Especially so, as that decision was in harmony with the previous rulings of the court.

THE DECREE IN THE PANA TOWNSHIP CASE—EFFECT OF.

The decree of the Appellate Court, after giving the names of the parties, including the unknown owners, and holders of bonds and coupons issued by the Town of Pana, recites, that "on this day come again *the said parties*, and the court having dilligently &c."

The first question under this head which we propose to consider is as to who are included under the term *parties*. Does it include as well the unknown owners and holders of bonds and coupons as the parties who are made defendants by names. The statute under which this proceeding was had provides that "in all suits in chancery in any of the courts of this State, if there be persons interested in the same whose names are unknown, it shall be lawful to make such persons *parties* to such suit or proceeding, by the name and description of *unknown persons* —and such process shall be issued against the parties by the name and description given aforesaid. All decrees, orders, judgments and proceedings made; or had with respect to such unknown persons, shall have the same *effect* and be as *binding and conclusive upon them*, as though such suit or proceeding had been instituted against them by their proper names." See Secs., 45 & 46, Gross' Stat., (3rd. Ed.) 1869.

Gitt vs. Watson, 18 Mo., 274.

Under these sections of the statute there can be no doubt that the holders and owners of the bonds in controversy were parties defendant to the bill, and had the right to answer, plead or demur thereto, take and appeal, or sue out a writ of error, the same as though they had been made defendants by name upon the record. Neither does the law or practice require that when an unknown person comes forward to defend, that the case as to him should be changed, and he should be permitted only to defend in his true name. The plaintiff cannot take advantage of his being sued by a wrong name;—after appearing by such name, and litigating the cause through the Appellate and Supreme Courts, he is concluded in all future litigation by setting up the former adjudication.

Pond vs. Ennis *et al.* 69 Ills., 345.

LaFayette Ins. Co., vs. Franch, *et al.* 18 How., 405.

Smith vs. Bowler, 1 Mass., 76.

Oakley vs. Giles, 3 East., 167.

Girard vs. Heysinger, 15 Ills., 288.

In the case of Radcliffe vs. Noyes, 43 Ills., 320, it was held that where a stipulation, said that the parties came by their solicitors, it was broad enough to embrace all the defendants to the suit. It is an appearance.

Sullivan vs. Sullivan, 42 Ills., 316.

The decree offered in evidence declares the entire bonds and coupons void, and the plaintiff having been a party defendant to the decree, and having appeared and joined in error in the Appellate Court, is bound and cannot attack the decree collaterally.

Buckmaster vs. Reiner, 12 Ills., 214.

Same vs. Carlin, 3 Scam., 108.

The general and well-settled rule of law is that where the proceedings are collatrerally drawn in question, and it appears upon the face of them that the subject-matter is within the jurisdiction of the court, they are voidable only.

Harvey vs. Tyler, 2 Wall., 345.

Jurisdiction of the person is obtained by the service of process, or by the voluntary appearance of the parties in the progress of the cause.

Cooper vs. Reynolds, 10 Wall., 316.

Pennoyer vs. Neff, 95 U. S., 719.

Any movement by the court is necessarily the exercise of jurisdiction, and where a defendant has appeared and submitted himself to the jurisdiction he is concluded.

Grignons' Lessee vs. Astor, 15 Curtis, 130.

R. I. vs. Mass., 12 Curtis, 888.

Kemps' Lessee vs. Kennedy, 2 Curtis, 224.

Thompson vs. Tolmie, 8 Curtis, 62.

McGowan vs. Scales, 9 Wall., 30.

Brooklyn vs. Ins. Co., 99 U. S., 370.

Empire vs. Darlington, 101 U. S., 92.

Block vs. Comrs., 99 U. S., 691.

The decree offered in evidence is the decree of a court of general jurisdiction, and nothing is intended to be out of its jurisdiction, except that which specially appears to be so.

Kennedy *et ux.* vs. Greene, 13 Ills., 342.

The presumption which the law indulges in favor of a court of general jurisdiction, can only be overcome in a collateral proceeding, when the record itself shows that there was no jurisdiction.

Osgood vs. Blackmore, 59 Ills., 267.

Barnett vs. Wolf, 70 Ills., 77.

Mulvey vs. Gibbons, 87 Ills., 368.

Whether the defendant appeared before the court so as to give jurisdiction to the court to proceed in the case was one of the questions the court had to determine before rendering judgment, and the determination is final and conclusive, unless set aside upon a direct application for that purpose. Its correctness cannot be questioned collaterally.

Toles, *et al*, vs. Darling, *et al*, 82 Ills., 142.

The decree of the Appellate Court, as well as that of the Circuit Court, finds that all of the *defendants*, which included the unknown bond-holders, were amenable to the jurisdiction of the court. The record shows that the defendants appeared, and this fact cannot be controverted in an action in which the judgment comes in question only collaterally. It is voidable only for want of notice. Inasmuch as on its face it is valid, it should have been avoided by some appropriate and direct proceeding.

Landis vs. Brant, 18 Curtis, 420.

Price vs. R. R. Co., 40 Ills., 45.

Where the record shows that the defendant enters a motion to quash the summons, and there being nothing in the record to exclude the defendant, it was held that the language imported that he appeared, and that it would bear no other construction.

Sullivan vs. Sullivan, supra.

Kerr, *et al* vs. Swallow, 33 Ills., 380.

This case went from the Circuit to the Appellate Court, and from the Appellate to the Supreme Court.

Both the Appellate and Supreme Court assumed jurisdiction over all the defendants, as well as over the subject-matter, and the decree of the Circuit Court, entered under the mandate of the Appellate Court, expressly finds, and there is nothing in the record to contradict the finding, that all of the defendants were amenable to the jurisdiction of the court; *and then declares the entire issue of bonds and coupons void,* and perpetually enjoins any suit or suits for the collection thereof. The Appellate and Supreme Court having passed upon the merits of the decree, this court has now nothing before it but the proceedings subsequent to the mandate.

Santa Maria, 5 Cranch, 314.

Washington Bridge Co., 15 Curtis, 498.

"To permit, after the decree became a matter of record in the highest court in which the cause could be finally tried, and after it had been sent down upon a mandate, a suggestion of a want of jurisdiction in this court upon the first appeal, as a sufficient cause for re-examining the judgment then given, would certainly be a novelty in a Court of Equity. Shall the plaintiff in this suit be allowed to do more now, in this collateral proceeding, than would be permitted on a bill of review, an appeal, or writ of error?"

Skillern's Executors, vs. May's Executors,
6 Cranch, 267.

Martin vs. Hunter, 1 Wheaton, 304.

Browder vs. McArthur, 7 Wheaton, 58.

In the light of these authorities, how can this court say that the Appellate and Supreme Court, directing the Circuit Court to enter a decree to annul the *entire issue of bonds,* had not jurisdiction to direct the mandate, and the Circuit Court to pronounce the decree. We insist that the decree is conclusive; that the bonds were issued without warrant or authority of law and are therefore void.

PLAINTIFFS ARE NOT "BONA FIDE" HOLDERS.

The illegality of the bonds being established by the findings of the court, as well as by the agreed statement of facts, when taken in connection with the law under which they purport to have been issued, the question is presented, are the plaintiffs *bona fide* holders?

There is an entire absence of both evidence and the findings of the court upon this point. Treating the coupons sued on as negotiable paper, and conceding, to its fullest extent, the protection which commercial usage throws around it, we insist that it devolves upon the plaintiffs the *burden* of showing that they took the coupons and gave value for them before maturity. This principle is asserted in the text-books of Chitty, Story, Parson, Daniel, and others, and is so laid down and sustained by numerous citations of authority by the learned American annotator of Smith's Leading Cases, Vol. 1 P. 752.

It is not necessary, however, to do more than cite the authority of this court, where the rule has been definitely settled.

Smith vs. Sac County, 11 Wall., 146.

Cromwell vs. Sac County, 94 U. S., 351.

Stewart vs. Lansing, 104 U. S., 505.

The fair and reasonable construction of the agreed state of facts and of the findings are that the plaintiffs did not acquire the bonds and coupons in controversy until after the coupons, or most of them, became due.

The litigation over these bonds and coupons commenced in January, 1876, and lasted until December, 1879. During all that time no interest was paid on the bonds and coupons, and they were trailing about the markets as worthless discredited paper, only to turn up in the possession of the plaintiffs, according to the findings of the court, shortly before the commencement of the suit; and no effort whatever was made by them to establish that they were *bona fide* holders of the paper, having acquired title thereto for a valuable consideration.

THE JUDGMENT IS FOR MORE THAN THE AMOUNT OF COUPONS SUED UPON, AND INTEREST.

The plaintiffs count on one hundred and forty-four coupons falling due, semi-annually. These coupons, with interest thereon at the rate of six per cent, the legal interest of the State of Illinois, cannot make up the amount of the judgment. There is a difference between them of over five hundred dollars.

For these reasons we insist that the judgment of the Circuit Court be reversed.

W. J. HENRY.
For Plaintiff's in Error.

17529

OFFICE SUPREME COURT U.S.
FILED
DEC 28 1882
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

TOWN OF PANA
vs.
JAMES H. BOWLER AND ISAAC H. MERRILL.

ERROR TO SOUTHERN DISTRICT OF ILLINOIS.

No. 1008.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

GEORGE A. SANDERS,
For Defendants in Error.

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1882.

Name and style.

Powers and privileges.

oute of road.

created a body corporate and politic, under the name and style of "The Pana, Springfield and Northwestern Railroad Company," with perpetual succession; and under this name and style shall be capable of suing and being sued, pleading and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure, and by their said corporate name and style shall be capable in law of contracting and being contracted with; shall be and are hereby invested with all the powers, privileges, immunities and franchises of receiving and disposing of real and personal estate, which may be needful to carrying into effect fully the purposes and objects of this act; and said company are hereby authorized and empowered to locate, construct and complete a railroad, commencing at or near Pana, in Christian county; thence to Taylorville, in Christian county; thence to city of Springfield, in Sangamon county; and thence to some eligible point on the Illinois River, to be determined by said company, with one or more tracks or lines of rails. Said company shall commence the construction of said road in good faith within one year, and shall complete the same within ten years.

Capital stock.

Directors.

orum.

§ 2. The capital stock of said company shall consist of one million dollars, and may be increased by said company to five millions, to be divided into shares of one hundred dollars each. The immediate goverment and direction of said company shall be vested in seven directors, who shall be chosen by the stockholders of said company, in the manner hereinafter provided, who shall hold their office one year after their election, and until others shall be duly elected and qualified to take their places as directors; and the said directors, a majority of whom shall form a quorum for the transaction of business, shall elect one of their number to be president of the company, and shall have power to appoint or elect such other officers as they shall deem proper.

§ 3. The corporation hereby created shall have power to locate, construct, furnish, maintain and operate a railroad as aforesaid, with all the necessary side tracks, turn-outs, switches, depots, stations and all necessary buildings, erections and structures; and for this purpose they are hereby vested with all the powers necessary for the purchasing, taking, holding and selling and transferring property, real and personal, as natural persons, as the board of directors may deem necessary to carry out the objects of this act.

Right of way

§ 4. For the purpose of acquiring the right of way for the construction of said road, side tracks and turn-outs, and grounds for depots, stations and other buildings, erections and structures, and for the purpose of obtaining stone, gravel and other material for building, ballasting or repairing the same, and of a right of way to said material, the said company be and they are hereby authorized and empowered to take, condemn and use the same, under the provisions of an act to amend the law condemning the rights of way for purposes of internal improvements. Approved June 22, 1852.

Union with other roads.

§ 5. Said company shall have power to unite, connect or consolidate its railroads with any other railroad constructed, or which may hereafter be constructed in this State, upon such terms as may be mutually agreed upon between the companies so uniting, connecting or consolidating; and for that purpose full power is hereby given to said company to make and execute such contracts, with any other company, as will secure the objects of such connection or consolidation; and the said corporation may furthermore lease or purchase, upon such terms as may be agreed upon, any other road or parts of road, either wholly or partially constructed, which may constitute or be adopted as part of their main line; and by such lease or purchase they shall acquire and become vested with all the rights and franchises pertaining to such road or part of road so leased or purchased, in the right of way, construction, maintenance and working thereof.

Borr'w money

§ 6. The said company is hereby authorized from time to time to borrow such sum or sums of money as may be necessary for the completing, equipping, furnishing, operating and maintaining their said railroad; and to issue and dispose of the bonds at such rate of interest and at such discount as may be thought for the benefit of the company; and to mortgage their corporate property and franchises, or convey the same, by deed of trust, to secure the payment of any debt contracted by said company for the purpose aforesaid. And the directors of said company may confer on any bondholder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time, and may further authorize the holder of any such bonds to vote at any and all elections for the election of officers of said corporation, under such regulations as the directors of said company may see fit to adopt; and any such bonds that may be sold or disposed of at a less rate than par, shall be as valid and binding upon said company as if the same were sold for the par value thereof.

Trust deeds and mortgages.

Directors.

§ 7. All the corporate powers of said company shall be vested in and exercised by a board of directors, to consist of seven members, and such officers, agents and servants as they shall appoint. Vacancies in all the board of directors may be filled by a vote of two-thirds of the directors remaining, such appointees to continue in office until the next annual election of directors, which said

Officers.

Vacancies.

annual elections shall be held at such time and place as may be designated and fixed by the by-laws of said company, thirty days printed notice being given in two newspapers, having circulation along the line of said railroad.

Books opened

§ 8. The persons named in the first of this act, are hereby appointed commissioners, who, or a majority of them, after a meeting duly called by thirty days notice thereof in the Illinois Journal and Illinois State Register newspapers, published in the said city of Springfield, shall meet and proceed to open books, and receive subscriptions to the capital stock of said company. Ten dollars for each share subscribed shall be paid on subscribing, and whenever fifty thousand dollars shall have been subscribed, the subscribers may organize said corporation, and proceed to the election of directors; and when the directors of said company are chosen, the said commissioners shall deliver the said subscription books, with all the sums of money received by them as commissioners, to said directors. No person shall be a director who shall not be a stockholder, and each stockholder shall be entitled to one vote for each share of stock he shall hold, upon which all calls have been paid. The directors of said company, after the same is organized, shall have power to open books to fill up the capital stock of said company, or any part thereof, at such time as they may deem expedient; and all installments required to be paid on the stock originally subscribed, or what may be taken to increase said capital, shall be paid at such times and in such amounts as said directors may prescribe: *Provided*, that subscriptions of stock may be made to said company in lands, at their cash value at the time of subscription, as may be agreed upon between the subscriber and the directors of said company, such subscriptions to be designated on the books as a

Subscription to stock.

Proviso.

land subscription, and to be considered as paid by a conveyance of such land to the company: *And, provided, also,* that owners of lands along or near the line of said road, may be authorized to subscribe stock and to secure payment of the same, by promissory note and mortgage; such note to draw eight per cent. interest, payable semi-annually, from and after the road shall have been completed through to, or parellel with the mortgaged premises, or any part thereof, with the privilege to the maker to discharge the principal at pleasure; such subscription to be designated on the books as a mortgage subscription, and to be free from all calls upon stock; such subscribers, however, shall have no right to vote as stockholders in said corporation, until interest shall have become payable upon such subscriptions: *And, provided, further,* that said corporation shall dispose of all lands to which it may acquire title or fee other than such real estate, as it may acquire for the use and operations of said road, as in this act provided, within five years after the acquisition thereof. Whenever it shall be necessary for the construction of said railroad to intersect or cross the track of any other railroad or stream of water, or water course, or road or highway on the route of said road, it shall be lawful for the company to construct their railroad across or upon the same: *Provided,* that the said company shall restore the railroad, stream of water, water course, road or highway, intersected or crossed, to its former state, or in sufficient manner not materially to impair its usefulness.

Proviso 2,

Right of way.

§ 9. That the right of way and the real estate for the right of way, and for the purpose aforesaid, purchased or acquired by said company, whether by agreement or otherwise, or which shall become the property of the company, by operation of law, as in the act provided, shall, upon the payment of the money agreed or adjudged to be paid to the owner or owners of said land, as a compensation for the same, become the property of said company in fee simple.

Rights confirmed.

§ 10. That all the rights, privileges and advantages, with the limitations and restrictions conferred upon the Illinois Central Railroad Company, also, the rights, privileges and advantages, with their limitations conferred by an act entitled "An act to provide for a general system of railroad incorporations," approved November 5, 1849, and the several acts amendatory thereof, except as hereinafter qualified, are hereby conferred upon the Pana, Springfield and Northwestern Railroad Company; and cities and counties shall be entitled to subscribe for stock in said company in like manner and with like effect, as is provided in the said act referred to, and acts amendatory thereof: *Provided, also,* that the county court of Christian county, may, with or without submitting the question to the people, subscribe for stock in said company, payable in lands, to be taken upon such terms and conditions, and be conveyed in such manner as the said county court and said company may agree upon: *And, provided, also,* that such powers to subscribe for stock on the part of said county payable in lands, shall not be restricted in amount or value to one hundred thousand dollars, nor shall such right of subscription in lands in any manner impair the power of said county, to make a money subscription of one hundred thousand dollars to said company, under the provisions of said act, to provide for a general system of railroad incorporations and acts amendatory thereof: *Provided,* that a land subscription shall not, in any way, impair the right or derogate from the power to make a money subscription.

Towns may subscribe stock.

§ 11. To further aid in the construction of said road, by said company, any town under township organization, in Sangamon county, Illinois, may subcribe to the capital stock of said company, in any sum not exceeding fifty thousand dollars.

Vote on taking stock.

§ 12. No such subcription shall be made until the question has been submitted to the legal voters of the town in which the subscription is proposed to be made; and the clerk of each said town is hereby required, upon the presentation of a petition, signed by at least ten citizens, who are legal voters and tax payers of the town for which he is clerk, in which petition the amount proposed to be subscribed shall be stated, to post up notices in at least three of the most public places in said town, which notices shall be posted not less than ten days before the day of holding such election, notifying the legal voters of said town to meet at the usual places of voting, or some other convenient place in said town for the purpose of voting for or against such subscriptions; but no such vote shall be taken unless at a regular election for town and county officers.

Town boards.

§ 13. If it shall appear that a majority of all the voters have voted "for subscription," it shall be the duty of the supervisor of each of said towns that shall vote for such subscription, to subscribe to the capital stock of said railroad company in the name of the town for which he is supervisor, the amount so voted to be subscribed, and to receive from said company the proper certificates therefor; he shall also execute to said company in the name of said town, bonds bearing interest not to exceed ten per cent. per annum, which bonds shall run for a term of not less nor more than twenty years, and the interest on the same shall be made payable annually; and which bonds shall be attested by the clerk of the town in whose name the bonds are issued; and it shall be his duty to make a record of the issuing of said bonds. Said bonds shall be delivered to the president or secretary of said railroad company, for the use of said company.

Returns of elections.

§ 14. It shall be the duty of the clerk of each of said towns, in which a vote was given for subscription, within ten days thereafter, to transmit to the county clerk of Sangamon county, a transcript, or statement of the vote given, and the amount voted to be subscribed, and the rate of interest named in the bonds.

Town assessments.

§ 15. It shall be the duty of the county clerk annually thereafter to compute and assess upon all taxable property returned by the assessor of each of said towns which have voted to subscribe a sufficient sum to pay the interest on all bonds issued by the respective towns, which tax shall be extended upon the collectors' books, as other taxes are, and shall be collected in the same manner that other taxes are collected; and when collected, shall be paid into the county treasury, as county taxes are paid.

Payment of bonds.

§ 16. It shall be the duty of the treasurer of said county to pay out, on the presentation to him of the bonds issued by any town, as aforesaid, the amount due upon each of said bonds as interest, out of any money in his hands for that purpose, and indorse the payment upon said bonds, or take such voucher as he may prescribe. He shall also keep an account with each town of all money received by him, and paid on account of said towns, which account shall at all times be open to inspection by all persons wishing to examine the same.

Towns represented in elections.

§ 17. At all elections for officers, and on all questions voted upon by the stockholders of said company, the supervisor of the town or towns who may subscribe to the stock of said company shall represent and cast the vote which said stock is entitled to.

First division of road.

§ 18. The road to be constructed by said company shall be divided into two divisions: That portion of the road between Springfield and Pana shall be designated the first division, and that portion between Springfield and the Illinois river shall be designated the second division; and subscribers, either individual or corporate, to the stock of said company, may designate upon which division of said road such subscription shall be applied, and said corporation shall faithfully apply such subscriptions to the division thus designated; but any surplus of stock subscribed for the benefit of any one section of said road remaining after the construction of said section, may be applied by said company in aid of the construction of any other section.

Second division.

Other roads may take stock.

§ 19. Any railroad company with whose road the aforesaid road may intersect or connect, is hereby authorized and empowered to subscribe to the capital stock of this company, any sum not exceeding one hundred thousand dollars, and shall have the same rights, privileges and powers, as other stockholders in this company, and shall be subject to the same conditions, restrictions and limitations as other stockholders therein.

Liability.

§ 20. No stockholder, whether corporate or natural person, shall be otherwise liable upon his, her or their subscription of stock, than for the amount of their respective subscriptions of stock to said company, and according to the calls of the directors, as heretofore provided.

§ 21. This act shall take effect from, and after its passage.

Approved February 16, 1865.

An Act *to amend an act entitled "An act to incorporote the Pana, Springfield and Nortewestern Rrailroad Company," in force April* 16, 1869. [Private Laws of Illinois, vol. 3, 1869, page 330.]

Preamble.

Whereas, the board of supervisors of the county of Sangamon, State of Illinois, on the 10th day of March, 1868, resolved that the question should be submitted to the voters of Sangamon county, at an election to be held on the 14th day of April 1868, whether they would subscribe fifty thousand dollars to the stock of the Pana, Springfield and Northwestern Railroad, east of Springfield, and fifty thousand dollars to the same road west of Springfield, and one hundred thousand dollars to the stock of the Gilman, Clinton and Springfield Railroad, to be paid for in bonds of the county, payable in twenty years, and drawing interest at the rate of eight per cent. per annum. And whereas, the voters of said county did, on the 14th day of April, 1868, cast a majority of votes in favor of said subscription; now, therefore,

Election valid

Section 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That said election be and is hereby declared to be legal and valid, and said board of supervisors are hereby authorized to issue bonds to the amount, and upon the terms, specified by their resolutions of March 10, 1868.

Issue of b'nds

§ 2. Whenever any section of ten miles of either of said roads shall be completed, and in operation, the board of supervisors of said county is hereby authorized to issue a proportionate amount of bonds to pay for their subscription: *Provided,* that the whole amount so issued to each road, shall not exceed the amount above specified.

Board of Supervisors.

§ 3. The same powers conferred upon the board of supervisors of Sangamon county are hereby conferred upon the board

Powers.

of supervisors of Christian county, with reference to their subscription to the capital stock of the Pana, Springfield and Northwestern Railroad.

Construction of road.

§ 4. The Pana, Springfield and Northwestern Railroad shall have power to extend, construct and maintain its railroad from Pana, in Christian county, to some point on the Chicago Branch of the Illinois Central Railroad, as it may elect; and in the extension thereof, and the construction, maintenance and operation of said road, so extended, it shall have, possess and exercise all the powers, rights, privileges, immunities and franchises which it now possesses or at any time has possessed and enjoyed during its existence under its charter and amendments thereto.

Towns and cities may take stock.

§ 5. Whenever the citizens of any town in any county which has adopted township organization, and through which said Pana, Springfield and Northwestern Railroad shall pass, are desirous that said towns should subscribe for stock in said road, they are hereby authorized to subscribe for said stock, in any sum not exceeding fifty thousand dollars, and to issue bonds therefor in the same manner as is prescribed in the act incorporating said railroad company, approved February 16, 1865: *Provided*, the question of subscription shall first be submitted to the legal voters of the town, as required in said act.

When majority in favor of subscription.

§ 6. Whenever it shall appear that a majority of the voters in any town shall have voted in favor of a subscription to said roads, and the board of supervisors shall have been notified thereof, then it shall be the duty of said board of supervisors to assess and levy a tax upon said town, and determine the rate per centum of such tax upon all the taxable property in said town; and the tax in all the towns voting in favor of said subscription in any county shall be uniform. After said tax shall have been levied, then the clerks of each of said towns in which a vote is given for subscription, and the county clerk and county treasurer of the counties in which such towns are situated, shall discharge the same duties and in the same manner as required in Sections 14, 15 and 16, of the act aforesaid.

Townships may take stock.

§ 7. Whenever the citizen of any township, in any county which has not adopted township organization, and through which said Pana, Springfield and Northwestern Railroad shall pass, are desirous that said township should subscribe for stock in said road, they are hereby authorized to subscribe for said stock in any sum not exceeding fifty thousand dollars.

Submitted to legal voters.

§ 8. No subscription shall be made until the question has been submitted to the legal voters of the township in which the subscription is proposed to be made; and the treasurer of the board of trustees for schools in any such township is hereby required, upon the presentation of a petition, signed by at least ten citizens who are legal voters and tax-payers of such township, to perform the same duties as are imposed upon the clerks of the several towns in Sangamon county by the act last aforesaid, and the vote shall be taken any time after thirty days notice of the time and place of voting.

Board of trustees of sch'ls may take stock.

§ 9. If it shall appear that a majority of all the voters have voted for subscription, then the treasurer of the board of trustees for schools in said township shall perform the same duties as are imposed by said act upon the supervisors of towns, with regard to subscribing for the capital stock of said road and issuing bonds therefor. Whenever it shall appear that a majority of the voters in any township shall have voted in favor of a subscription to said roads, and the county court shall have been notified thereof, then it shall be the duty of said county court to assess and levy

Duties of the Co. Court.

a tax upon said township, and determine the rate per centum of such tax upon all the taxable property in said township; and the tax in all the townships voting in favor of said subscriptions in any county shall be uniform. After said tax shall have been levied, then the county clerk of the proper county shall, annually thereafter, compute and assess upon all the taxable property in such townships a sufficient sum to pay the interest on all such bonds, which tax shall be extended upon the collector's books as other taxes are, and shall be collected in the same manner as other taxes are; and the county treasurer of the proper county shall discharge the same duties as are prescribed by said act with reference to the payment of the interest on said bonds.

Levy tax to pay interest

§ 10. This act shall take effect and be in force from and after its passage.

In force April 16, 1869.

AN ACT *to incorporate the Illinois Southeastern Railway Company. In force February* 26, 1867. [Private Laws 1867, Vol. 2, pp. 750–745.]

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That Charles A. Beecher, Joseph J. R. Turney, Robert P. Hanna, Carroll C. Boggs, Joseph T. Fleming, Henry Halthausen and Edward Bonham, of Wayne county, and John W. Wescott, Wm. B. Wilson, Daniel McConly and Wm. H. Hanna, of Clay county, their associates, successors and assigns, are hereby created a body corporate and politic, under the name and style of "The Illinois Southeastern Railway Company;" and by that name and style shall be capable in law and equity of suing and being sued,

Name and style.

Powers.

pleading and being impleaded, defending and being defended against, in all courts and places whatsoever, in like manner as natural persons, and may have and use a common seal, and alter and renew the same at pleasure, and by their corporate name and style shall be capable in law of contracting and being contracted with, and taking and purchasing, receiving, or in any manner receiving, acquiring and holding, leasing, selling and conveying or assigning any property, whether real, personal or mixed, so far as they may deem necessary for the purposes of this act.

Tracks — line of road.

§ 2. The Illinois Southeastern Railway Company shall have full power and authority to locate, construct, finish, equip and maintain a railroad, with one or more tracks, commencing at some suitable point on the Chicago branch of the Illinois Central Railroad, running thence by such line as shall be deemed by them most convenient, by way of Fairfield, in Wayne county, to the Ohio river, at any point not south of Metropolis City, nor north of Shawneetown; and shall also have full power and authority to locate, construct, finish, equip and maintain a branch of said railroad, with one or more tracks, upon such line as they may deem most convenient, from Fairfield, in Wayne county, to the Great Wabash river, at any point not farther north than Greyville, on said river: *Provided*, that the point of junction or connection of said railroad with the Chicago branch of the Illinois Central Railroad may be at any point not north of Mason, in Effingham county, nor south of Kinmundy, in Marion county; and said railroad may intersect or cross the Ohio and Mississippi Railroad at any point not further east than Clay City, nor west of the town of Xenia, both in Clay county; and if said company shall deem it advisable to build said branch of said railroad before the completion of the main line, or any part thereof, they are hereby fully empowered and authorized so to do.

Proviso.

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Capital stock.

§ 3. The capital stock of said company, may consist of one million of dollars, which may be increased by the board of directors to any sum not exceeding six millions, to be divided into shares of one hundred dollars each, which may be sold and transferred in manner provided for in the by-laws of said company.

Directors.

Quorum.

First board.

By-laws.

§ 4. The affairs of said company shall be controlled and managed by a board of directors, consisting of eight persons, which may be increased to any number not exceeding thirteen, a majority of whom shall constitute a quorum for the transaction of business, and Chas. A. Beecher, Joseph T. Fleming, Wm. H. Hanna, Joseph J. R. Turney, Carroll C. Boggs, Edward Bonham, Wm. B. Wilson and John W. Wescott, are hereby appointed the first board of directors, who shall hold their office until their successors are elected, and duly qualified in such manner as may be provided by the by-laws of said company; which said by-laws shall be established by the directors of said company; which by-laws may be altered and changed by a two-thirds vote of said directors, and said board of directors shall have the power of electing, out of their number, a president, secretary and treasurer, and such other officers as the by-laws may provide for.

Possession of property, etc.

Donations, etc.

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§ 5. The said company shall have full power and authority, by themselves or their agents, or employees, to enter upon any lands belonging to individuals, or corporations, for the purpose of surveying, resurveying, examining, and locating a line for said railroad, or the branch thereof; and shall have full power to receive from individuals, or corporations, by purchase, donation, or otherwise, any and all lands they may deem necessary, for the track or tracks of said road or branch thereof, not exceeding one hundred and fifty feet in width; also, all lands they may deem necessary for side tracks, turnouts, stations, water tanks depots and other buildings and structures; also, they may purchase, hold or receive as donations from individuals or corporations, all lands, and the right of way thereto, on which there may be found stone, gravel, wood or coal, suitable for construction, ballasting, repairing, fencing or operating said railroad, or its branch, and for constructing or repairing the buildings, structures or appurtenances of said railroad. Said company may take such conveyance of lands, purchased or donated for the purposes of this section, from individuals or corporations, as may be agreed upon by the parties interested. In case of disagreement as to right of way, price of any land or lands, or other privileges embraced in this section, the same may be condemned, taken, held and used by said company for the purpose of this act in the manner provided for in condemning of lands for right of way, in an "act to amend the law condemning right of way for purposes of internal improvements." Approved June 22, A. D. 1852.

Donations.

Conveyances, etc.

Right of way.

§ 6. The said company shall have power to unite its railroad with any other railroad now constructed, or which may hereafter be constructed; or this said company may purchase, or receive by donation, the corporate franchise, property or privileges, or any part of either, of any other railroad company whose charter confers power to construct a railway through or into Wayne county, upon such terms as may be agreed upon by and between the companies, or their successors or assigns interested, and shall have power to build said railroad or its branch across any other railroad, highway or water course: *Provided*, that any railroad so crossed or intersected shall be restored to its former usefulness.

Consolidation

Proviso.

§ 7. The county court or board of supervisors, (where such county has adopted township organization,) of any county into or through which this road or its branch may pass, is hereby

County donations.

authorized and fully empowered to donate to said company, as a
bonus or inducement towards the building of said railroad or its
branch, any sum not exceeding one hundred thousand dollars,
and may order the clerk of the county court or board of supervisors of such county to issue bonds of the county to the amount
donated; and such clerk of the county court or board of supervisors, as the case may be, of such county, shall countersign and
deliver such bonds so issued to the president or directors of said
Proviso. company, which said bonds may bear any rate of interest not to
exceed ten per cent per annum, payable at maturity of the bonds,
as hereinafter expressed and yearly thereafter: *Provided*, that
no donation by the county court or board of supervisors of any
Election. such county shall be of a greater sum than fifty thousand dollars,
until after the question of such larger donation shall have been
submitted to the legal voters of such county, at an election to be
called, conducted, returns made, canvassed and published, in the
usual manner of calling, conducting, making returns, canvassing
Donations and amount and publishing special county elections, at which election each
voter shall vote a ticket upon which is written or printed the
words "for donation," or "against donation;" and if a majority
of the ballots cast at such an election be in favor of donation, it
shall be the duty of the county court or board of supervisors of
Bonds. such county so voting to donate some amount, not less than
fifty thousand dollars, nor more than one hundred thousand dollars, to said company, and to order the issuing of bonds of the
county, as hereinbefore provided, for the amount so donated,
which bonds shall be made payable to the directors of said company, and may be in any denomination of not less than one hundred nor more than one thousand dollars each, at the discretion
Proviso. of said county court so issuing the same: *Provided*, that the
bonds of any county so donated and issued shall not mature nor

nor become due or payable, nor any interest accruing thereon, or upon any part thereof, until the said company shall have completed, or cause to be completed, so much of the line of said road or its branch as may be within the county so donating, or when some certain specified section or part of the road shall have been finished, as may be agreed upon between this company and county court, or board of supervisors of the county making the donation; and each of said bonds shall declare upon its face the conditions upon which it is to become due.

Bonus.

§ 8. The county court or board of supervisors of any county authorized by the foregoing sections of this act, to donate its county bonds to this company, is hereby fully authorized and empowered, to donate or grant as a bonus or inducement to said company, any land or lands belonging to said county; and to make such conveyance, or agreement for conveyance, for such lands or mortgages upon the same, or deeds of trust to the same, not inconsistent with the provisions hereto, as may be agreed upon by, and between, such county court or board of supervisors of such county and this company: *Provided,* that no absolute conveyance of such lands so donated, shall be made by any such county or board of supervisors, until the said company shall have fully completed such part of the said road as may lay within the limits of such county so donating the same, or until some one or more of the sections into which this road is hereafter to be divided is completed, and in running order. But any and all agreements for the conveyance of such lands or mortgages thereon, or deeds of trust thereto, or bonds for deeds to same, may be made by any such county court or board of supervisors, that may be deemed necessary to insure the absolute conveyance of such lands to this company when they have complied with the terms and conditions of said grant or donation.

Proviso.

Agreements.

Town donations.

Proviso.

Proviso.

§ 9. Any town, in any county under township organization, is hereby authorized and empowered to donate to said company, any amount, not to exceed thirty thousand dollars: *Provided*, that no such donation by any such town, to said company shall be made, unless the question of making such donation shall have been first submitted to the legal voters of such town at an election hereafter to be provided for: *And, provided further*, that no donation so made, nor any part thereof, nor any interest accruing thereon, or upon any part thereof, shall be paid or become due or payable to said company, until said company or its assigns or employees shall have completed their said railroad, or some certain part of said road, or its branch, as may have been agreed upon by the contracting parties.

Time and place of election.

Publication of proposition.

Taxation.

Returns of elections.

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§ 10. No such election for the purpose of submitting the question of making a donation by any such town authorized by section 9 of this act to donate to this company shall be held until the directors of said company shall have filed a proposition to the inhabitants of said town with the county clerk of the county wherein such town is situate, and a copy of the same with the clerk of said town; and if there be a newspaper published in such county, said proposition shall be published in full in the same, whereupon it shall be the duty of the clerk of such town to post up written or printed notices of the time and place of holding such election, in at least ten public places in such town, together with a copy of said proposition, at least twenty days before the day for holding such election, at which election the legal voters of such township shall vote for or against such proposition; and if a majority of all votes cast be for such proposition, the trustees of said town shall so certify the same to the clerk of the county court of the county wherein the town is situated, and such county clerk shall, upon the application of the company, after the donation so voted by any such town shall have become due or payable under the terms and conditions of the proposition upon which said election was ordered, compute and assess upon all the taxable property in said town an amount sufficient to pay such donation or any part or installment of the same so then being due and payable, which taxes so assessed shall be collected as other taxes; and the taxes so collected shall be paid to the treasurer of said company. And the election herein provided for shall be held, canvassed and returned as other regular town elections.

City donations.

§ 11. Any incorporated city or town throngh or by which said railroad or its branch may run, is hereby authorized and empowered to make donations to said company, in any sum not exceeding ten thousand dollars, on the same terms, propositions, conditions, and under the same restrictions as provided for towns in sections 9 and 10 of this act.

Individual donations.

§ 12. Said railroad company is hereby authorized and empowered, to receive from any and all individuals, any donation of any kind, that such individuals desire to make, whether of real or personal property, money, or promises to pay money, bonds of the United States, or of any State, or of any incorporation whatsoever, upon such time, terms, and conditions as may be agreed upon between said company and such donor, and for the insuring to said company of any such donation, when they have complied with the terms and conditions upon which such donation was made, said company is fully authorized and empowered to receive and hold any deed of conveyance for real or personal property, rights or franchises, or any bonds for deeds, or deeds of trust, of any other indentures, obligations, or writings of

Deeds of conveyance.

Bonds and indorsements.

any kind whatsoever, that may be deemed necessary; or said company may receive and hold any agreements, bonds, or instruments that may be deemed necessary to secure the transfer and delivery of any bonds, valuables, or securities, or to enforce the issuing of bonds or securities when donated.

Possession of property, real and personal.

Transfer of Titles.

Security.

§ 13. Said company, by its board of directors, shall have power to appoint a trustee to take and hold any and all the property, real, personal or mixed, or such part as may be agreed upon; and by order of said board of directors, or by virtue of any contract previously made by them, may transfer the same to any individual or company, corporation or body politic, with whom said railroad company may contract to build, or assist in building, said road or any part thereof, or the branch of the same; and the title to any and all of such property, shall vest in any such individual, company, corporation or body politic; that said railroad shall contract with, when the terms, conditions and contingencies of such contract shall have been fully complied with, or said trustee may take and hold any and all of said company's property, real, personal or mixed, as security, or indemnity, for any moneys borrowed or negotiated for by said company.

Indebtedness

§ 14. Said company shall have power to borrow money not exceeding in amount the value of the donations, subscriptions, franchises and other property of all kinds. And for any money so borrowed they may pay any rate of interest not exceeding ten per centum per annum. And said company may secure the payment of money so borrowed by mortgages upon, or deeds of trust for, or by making in any manner pledges, or securities of any of the franchises, donations, or property of any kind belonging to said company. And said company is fully authorized and empowered to issue bonds based upon their property, rights, credits, franchises, donations or subscriptions, and may transfer, sell, assign or mortgage, or dispose of such bonds, so issued, for money, or to secure the payment of money borrowed by said company, or to procure any property necessary to aid the building or operating their road or the branch thereof. Said bonds, so issued, shall be of any denomination not less than one hundred dollars, nor more than one thousand dollars, and may run for any term not more than twenty years, and bear any rate of interest not exceeding ten per centum per annum, and shall be legally executed in the manner to be prescribed by the by-laws of the said company.

Sections of

§ 15. Said railroad shall be divided into sections of not less than five miles each, and shall be numbered and designated as the board of directors shall by the by-laws provide.

Organization

§ 16. Said company shall organize, under the provisions of Section four of this act, within one year from and after the passage of this act, and shall commence the construction of said railroad, in good faith, within three years, and shall complete the same within twenty years.

§ 17. This act shall be a public act, and shall be in force from and after its passage.

Approved February 25, 1867.

AN ACT *to amend an act entitled "An act to incorporate the Illinois Southeastern Railway Company," in force February* 24, 1869. [See Private Laws State of Illinois, 1869, Vol. 3, page 308 to 315.]

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the corporation heretofore organized and known as "The Illinois Southeastern Railway Company," by virtue of an act approved February 25, 1867, shall have all the powers, rights, privileges and immunities which have been heretofore granted, and such other powers, rights, privileges and immunities as are hereinafter provided for; and all subscriptions to the capital stock, or donations, or gifts to said railway company, whether made by individuals, townships, counties or corporations, shall be and are by this act legalized; and the said company is hereby empowered and authorized to collect and use the same upon the conditions as donated and subscribed.

Powers and privileges.

Acts of corporations legalized.

§ 2. WHEREAS, doubts exist as to the power and authority of the persons named in the first section of the act to which this is an amendment, to associate other persons with them by vote or otherwise than by subscriptions to the capital stock of said company, or to increase the number of the directors, in pursuance of the fourth section of said act, or to elect a board of directors to succeed the first board appointed in and by said fourth section; *be it further enacted*, that the acts of said persons, so named in said first section of said act, and of any board of directors elected by them, and their associates, admitted as members of said company, by vote or otherwise, done in furtherance of the general purpose and design of said act, at any time prior to the election of a board of directors by the stockholders in said company, and of their qualifications as such directors, shall be held to be legal and valid acts of said company, as fully as if the same had been done by directors duly elected by stockholders.

Payment withheld till completion of road, etc.

§ 3. AND, WHEREAS, doubts exist as to the time when the interest upon the bonds to be issued and delivered to said company, under the provision of section seven (7) of said act, is to be given to run, and as to when said bonds are finally to become due and payable to any holder thereof; now, therefore, *be it further enacted*, that the true intent and meaning of said section is, and it is hereby so declared to be, that said bonds so to be issued shall not be delivered to said company, nor become binding obligations of the several counties issuing the same; nor shall interest be payable thereon until the said company shall have completed or caused to be completed so much of the line of said road as may be within the county so donating, or when some certain specified section or part of the road shall have been finished, as may be agreed upon between said company and the county court or board of supervisors, as the case may be, of the county making the donation. Then, and in all such cases, an amount of such bonds may be issued, proportioned to the length of such completed section or sections, and the county courts or boards of supervisors of said counties, respectively, may make and issue such bonds, payable to the directors of said company, or bearer, or otherwise, so as to make them negotiable by delivery, having such time to run, and bearing such rate of interest, not exceeding ten per cent. per annum, payable annually or semi-annually, in or out of the State, as may be agreed on by them and said railway company, and conformable to the terms upon which said donations were or may be, respectively, voted for in said counties, the interest to be payable to bearer, according to interest coupons attached to said bonds.

Bond placed in hand of trustee.

§ 4. Whenever said railway company shall so demand, the county courts or boards of supervisors, as the case may be, of said counties, respectively, and the proper authorities of the several townships, shall cause the bonds so provided for, with interest coupons attached, to be prepared and executed, and placed in the hands of a trustee, to be agreed upon by said county courts or boards of supervisors, who shall deliver said bonds to said railway company or its assigns, when and as the conditions upon which said donations were respectively voted for shall be fulfilled; and the coupons for all interest past due at the time when said company becomes entitled to such bonds, shall be detached and canceled by said trustee, and the interest for the current half year or year so arranged as that said counties shall only pay interest on said bonds from the date at which said railway company were entitled to receive the same.

Townships to issue bonds

§ 5. And, whereas, certain townships in Wayne and Clay counties have voted donations to said railway company, said townships are hereby authorized and empowered to issue township bonds for the amount so donated, without submitting the proposition again to be voted upon—said bonds to be issued in sums not less than one hundred nor more than one thousand dollars each, with interest coupons attached, drawing interest at the rate of ten per cent. per annum, payable semi-annually at the county treasurer's office in each county where such townships are located—said bonds to be payable in five years, or any time thereafter not exceeding twenty years, at the option of the townships; and said bonds to be signed by the supervisors thereof, or by the supervisor or supervisors of the district wherein such township is located, and to be countersigned by the township clerk of the respective townships; and said bonds to be delivered, properly executed, to the president of said railway company, when the conditions are complied with as contained in election notices and propositions submitted to and voted upon by the people of said township; and said townships shall each, by its proper corporate authorities, provide in due time by a levy and collection each year of a sufficient tax on its assessed property, to pay the interest on its bonds as it accrues half yearly as aforesaid, and

Supervisors to sign bonds.

Tax to pay interest.

ultimately, to provide for the principal of said bonds, at maturity: *Provided*, that said bonds shall be placed in the hands of a trustee on the demand of said railway company, as hereinafter provided: *And, also provided*, that such townships may determine by a vote of their electors at any regualar or special town meeting or election, whether they will issue bonds or not, in payment of the donation heretofore voted to said company.

§ 6. *Be it further enacted*, that all contracts made by towns, cities and counties, into, through or near which the Illinois Southeastern Railway shall run, whereby, as an inducement for the construction of said railway, such towns, cities and counties agreed, upon the completion of certain portions of said railway, to sell said company, at a nominal price, the stock of said company, for which said towns, cities or counties, by a vote of their electors, had theretofore subscribed and agreed to issue bonds in payment thereof, thereby, in effect, agreeing to make a donation to said company certain amounts of the bonds of such towns, cities or counties, as an inducement for the construction of said railway, are hereby declared to be valid and binding upon such towns, cities and counties, and shall be carried into effect, in good faith, by the same; and all orders for and notices of elections, and elections and returns of such elections in respect to such subscriptions of stock to said company in any such towns, cities and counties, are hereby declared valid and binding upon such towns, cities and counties.

§ 7. That the said Illinois Southeastern Railway Company shall have power and the right to connect with the Chicago Branch of the Illinois Central Railroad at any point, not north of the city of Effingham, and may continue its railway in a northwestwardly direction, to any point on the Mississippi river, not north of Rock Island and not South of Quincy, and to build branch roads, not to exceed thirty miles in length, with one or more tracks, to any towns or places in the several counties through which said road may pass; and towns and places in adjoining counties to those through which the main trunk runs, and continue such branches, if desired, to connect with other lines of railroads; and such extension of main trunk and branches to have all the powers, rights and privileges as have been heretofore granted by the act of incorporation of this company or by this act: *Provided*, that said company shall not construct any such branch road until the main line of said road shall be completed from the Ohio river to some point on the Chicago Branch of the Illinois Central Railroad. Said company shall have power to unite, connect or consolidate its railroads with any other continuous line of railroad constructed, or in course of construction, or which may hereafter be constructed in this state, upon such terms as may be agreed upon between the companies so uniting, connecting or consolidating, and, for that purpose, full power is hereby given to said company to make and execute such contracts with any other company as will secure the objects of such connection or consolidation; and the said company may, furthermore, lease, purchase or receive as a donation any other road or part of road, either wholly or partially constructed, which may constitute or be adopted as part of its main line or branches, and by such lease, purchase or donation, it shall acquire and become vested with all the rights and franchises pertaining to such road or part of road so leased, purchased or donated, in the right of way, donations, constructions, maintenance and working thereof: *Provided*, that such consolidations shall be subject to the general railroad law of 1849.

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ies.

§ 8. The said company shall have the right to construct a line or lines of telegraph along its railway and branches, and to maintain and operate the same, and shall have all the powers and privileges and be subject to all the liabilities prescribed by an act in relation to telegraphs, enacted by the State of Illinois and approved February 9, 1849, and any act or acts amendatory thereof or supplemental thereto.

Right of way

§ 9. It shall be lawful for the incorporate authorities of any incorporate city or village, through which said railroad shall be located, to donate or lease to said railway company, as a right of way, the right to lay a single or double track through said city or incorporated village, or any portion of the same, or any street or highway that the said railroad company shall select for that purpose; said lease or permit to be unchangeable and perpetual, except at the option of the said railway company and corporate authorities of such towns or cities.

Towns and cities may take stock.

§ 10. That any village, city, county or township, organized under the township organization law or any other law of this State, along or near the route of said railway or its branches, or that are in anywise interested therein, may, in their corporate capacity, subscribe to the stock of said company or make donations to said company to aid in constructing and equipping said railway: *Provided,* that no such subscriptions or donations shall be made until the same shall be voted for, as hereinafter provided. That whenever twenty legal voters of any such city, village, county or township shall present to the clerk thereof a written application, requesting that an election shall be held to determine whether such village, city, county or township shall subscribe to the capital stock of said company, or make a donation thereto, to aid in building or equipping said railway, stating the amount, and whether to be subscribed or donated, and the rate of interest and times of payment of the bonds to be issued in payment thereof, such clerk shall receive and file such application, and

Notice of election.

Mode and manner of election.

Supervisor may subscribe stock

Bonds executed.

Tax to pay interest.

shall immediately proceed to post written or printed notices, calling an election to be held by the legal voters of such village, city, county or township, which notice shall be posted in ten of the most public places of such village, city, county or township, for thirty days preceding an election; and said notices shall state fully the objects of such election; and such election shall be held and conducted, and returns thereof made as general elections provided by law in this State, and as provided by the charters of any such village or city: *Provided,* that at any election held under the provisions of this act, it shall not be necessary to cause a registration of the voters of such villages, cities, counties or townships; and if a majority of the votes cast at such election shall be in favor of such subscription or donation, then the corporate authorities of such village, city, county or township, organized under the township organization laws of this State, the supervisors of such township shall subscribe to the capital stock of said company, or donate thereto, as shall have been determined at such election, the amount so voted at such election, and shall issue the bonds, with interest coupons attached, of such village, city, county or township, to said railway company, in such denominations as said railway company may designate—said bonds drawing interest at a rate not exceeding ten per cent. per annum, and the interest on said bonds to be paid semi-annually, and said bonds to be paid in twenty years from the date of their issue, with the privilege reserved to the said villages, cities, counties or townships, of paying said bonds at any time after five years from the date of their issue; and said bonds to be signed in case of a village, by the chairman of the board of trustees thereof; in case of a city, by the mayor thereof; in case of a county, by the county judge or the chairman of the board of supervisors thereof, and in case of a township, by the supervisor thereof; and in all cases, to be countersigned by the clerk of said village, city, county or township. And any such village, city, county or township, subscribing or making donation to such railway, as aforesaid, shall, by its proper corporate authorities, annually thereafter, levy and collect a sufficient tax on its assessed property, to pay the interest on its bonds issued as aforesaid, as the interest becomes due, and provide in due time to pay the principal at maturity.

Duties of the clerk.

§ 11. Whenever the bonds issued by any village, city, county or township, in pursuance of this act, shall not be promptly paid at the time they fall due, or the interest thereon shall not be paid promptly when due, the clerk of such village, city, county or township, on the application in writing of any creditor to whom such arrears of interest or principal shall be due, shall assess the full amount of such interest or principal so due, from such village, city, county or township, and place the same upon the proper tax lists, to be collected with the other taxes of such village, city, county or township: *Provided*, that not more than three per cent. of taxes on the assessed valuation shall be levied in any one year.

[Sec. 11 is repealed by act approved Feb. 24, 1869. Private laws of Ill., 1869, vol. 3, p. 315.]

Evidence of bonds.

§ 12. That when payment of subscription to the capital stock of said company, or payments for donations to said company, have been or shall be made by villages, cities, counties or townships, in bonds of such villages, cities, counties or townships, under any act authorizing such subscription or donation to be made, all such bonds issued or negotiated by the proper authorities of such villages, cities, counties or towhships, and appearing regular on the face thereof, shall, in the hands of said company or any other *bona fide* holder thereof, be deemed and taken in all courts and elsewhere as *prima facie* evidence of the regularity of everything required by the several acts in relation to the issuing of said bonds, or by any other act to be done preliminary to the issuing and negotiation of said bonds.

Condition of payment of bonds.

§ 13. WHEREAS, in section 7 of the act to which this is an amendment, it was provided that any bonds in payment of any donations made by counties to said railway company, that each of said bonds shall declare upon its face the conditions upon which it should become due; AND, WHEREAS, the election notices heretofore issued by the proper authorities of any such counties making donations to said railway company, as well as the act to which this act is an amendment, contains certain conditions required to be fulfilled by said railway company before the bonds of such counties should become due and payable, and which conditions were by such notices, as well as by the act to which this act is an amendment, required to be inserted in the face of such bonds to be issued by such counties; therefore, *be it further enacted*, that upon a full and complete performance by said company of all the conditions upon which said bonds were to become binding obligations of the counties issuing the same, it shall be the duty of the county court or the board of supervisors, where such county is under township organization, of the respective counties making such donation, to enter an order upon their records, at a regular or special term of their court, directing the clerk of such court to certify, over his official seal, upon the back of each of said bonds so issued, in language as follows, viz.:

Certificate.

"All of the conditions upon which this bond was to become a binding obligation of the county of ——— have been complied with."

Bonds may be filed with Auditor.

§ 14. That the holders of twenty thousand dollars, or upwards, of the bonds of any county or city, issued in pursuance of this act, or to the act to which this is an amendment, may, at any time, file the same with the auditor of public accounts, for registration and for collection and payment of interest and principal; and all the provisions of "an act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13, 1865, so far as the same relates to registration, collection and payment of interest, according to the tenor of said bonds, shall be in force and be applied for the benefit of all such bonds, so registered, and whenever the proper county or city authorities shall provide for payment of principal of such bonds, the amount annually to be raised for that purpose shall be certified by the proper authorities of such county or city, to the auditor of public accounts, and the provisions of said act shall apply to the collection and payment of the principal of said bonds, as so provided by said county or city authorities. Nothing in this section shall be constructed to change the rate of interest or payment of principal of said bonds, as provided on their face, or in anywise to impair the rights of the holder of said bonds to collect either interest or principal, in case of any default in payment of the same.

Increase of directors.

§ 15. The board of directors of said company, after said railway is completed from the Ohio river to the Illinois Central Railroad, may consist of not less than five nor more than thirteen, and the number may be changed at any regular meeting of the stockholders, and a majority of the board of the directors shall constitute a quorum for the transaction of business; and said directors may open books for the subscription of stock at such time and under such regulations as they may determine.

§ 16. This act shall be deemed a public act, and shall be in force from and after its passage.

Approved February 24, 1869.

LAWS FOR GENERAL ELECTIONS.

Chapter 46, page 477, Revised Statutes of Illinois, 1880.—(Hurd's.)

JUDGES AND CLERKS OF ELECTION.

§ 32. In counties not under township organization, the county board shall, annually, at its last regular session preceding the general election, appoint three capable and discreet electors to act as judges of election in each election precinct, and may at any time fill vacancies.

§ 33. In counties under township organization, where the county board shall have divided a town into several election districts, it shall, at its last regular session preceding the general election, appoint three capable and discreet electors to act as judges of election in each election district in such town, and may at any time fill vacancies: *Provided*, that the supervisor, assessor and collector shall be designated as judges of election in the districts in which they respectively reside.

§ 36. VACANCIES FILLED.—If, at the time for the opening of any election, any person appointed or constituted a judge of election shall not be present, or will not act or take the oath to act in such capacity, the judge or judges present may appoint some other qualified elector to act in his place. If there be no judge of election present, or he refuses to act, such electors of the precinct or district as may then be present at the place of election, may fill the places of such judges by election from their number. The judges so appointed shall have the same power and be subject to the same penalties as other judges of election.

Sec. 37. CLERKS OF ELECTION.] § 37. The judges of election shall choose two persons, having similar qualifications with themselves, to act as clerks of elections, who may continue to act as such during the pleasure of the judges.

LAWS FOR ELECTIONS—TOWNSHIP ORGANIZATION.

Chapter 139, Revised Statutes of Illinois, 1880.—(Hurd's.) p. 1083.

56. Ex-officio judges of elections.] § 6. The supervisor, assessor and collector of the town shall be *ex-officio* judges of all elections in their town, except as otherwise provided by law. (L. 1861, p. 265, § 1.

62. Organizing town meeting—moderator.] § 2. The electors present, at any time between the hours of eight and nine o'clock in the forenoon of the day on which there is an annual, or special town meeting, shall be called to order by the town clerk, if there be one; in case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting. (L. 1861, p. 223, § 1.)

63. Powers of moderator.] § 3. The moderator so chosen shall have the same power and be subjected to the same penalties as other judges of election.

64. Oath of moderator.] § 4. Before the moderator of any town meeting shall enter upon the duties of his office, he shall take an oath faithfully and impartially to discharge the duties of such office, which oath may be administered by the town clerk, or other proper officer. (L. 1861, p. 223, § 2). P. 1084, § 62, *Supra.*

68. General election laws to apply.] § 8. The general laws of the State in regard to elections and qualifications of voters shall apply to all elections to be held under this act, so far as the same may be applicable, except as herein otherwise provided: *Provided,* that no registration of voters shall be reqaired. (See elections ch. 46). P. 1085, *Supra.*

SPECIAL FINDINGS OF COURT.

TRANSCRIPT OF RECORD.—(Page 22 to 30.)

The Court specially finds, and makes the same a part of the record in this case, the following facts:

1st. The Springfield and Illinois Southeastern Railway Company was created by the consolidation of the Pana, Springfield & Northwestern Railroad Company and the Illinois Southeastern Railroad, and that both of the charters of the said companies are referred to and made a part of this finding.

2d. That a petition was presented to the town clerk, signed by more than twenty legal voters, asking the said town clerk of Pana township to order an election, to be held on the 30th day of April, A. D. 1870, to determine whether said township would donate to the Springfield and Illinois Southeastern Railroad in the sum of one hundred thousand dollars, in bonds to become due in twenty years from date, or at the option of the township, five years from date, interest at the rate of eight per cent. per annum, interest payable semi-annually.

3d. The Court further finds from the evidence that upon the thirtieth day of April, A. D. 1870, an election was held in said township, in pursuance of said petition and notice given according to law, presided over by a moderator and town clerk, and that no election was held on that day or any other time in said township in pursuance of said petition and notice, presided over by the supervisor, assessor and collector, referring to this issue of bonds. The court further finds from the evidence that in the spring, summer and fall of the year 1873, the supervisor and town clerk, in pursuance of said election, held and presided over by said moderator and town clerk, and without any other authority of law than the above election and charters and amendments above referred to, issued one hundred bonds of the denomination of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, interest payable semi-annually; said bonds to become due and payable, at the option of the township, in five years or in twenty years; and that the coupons offered in evidence are the coupons attached to said bonds, and are now, and were before the commencement of the suit, held and owned by the plaintiffs.

4th. The Court further finds from the evidence, that in the year 1876, the town of Pana, John C. Hagler, Nelson Warren and D. E. Bogue filed a bill, in behalf of themselves and all the other tax-payers in the township, in the Christian county Circuit Court, against Chas. E. Lippincott, Auditor of Public Accounts of the State of Illinois, Thomas A. Ridgway, Treasurer of the State of Illinois, Amos A. Rhodes, Treasurer of Christian county, Illinois, William H. Kirkwood, County Clerk of Christian county, Illinois, William Tribbit, Town Collector of the town of Pana, H. N. Schuyler, William Eugene Hayward, John Vidder, William Houston, and the unknown holders and owners of said bonds and coupons issued by the town of Pana as aforesaid. And at the March term of the Circuit Court the said Schuyler, Hayward, Vidder and Houston, appeared and answered to said bill, and moved the Court to dissolve an injunction which had before that time been issued in said cause.

That afterwards, at the August term of said Court, a decree was entered in said Court dissolving said injunction and dismissing said bill, from which said decree an appeal was taken by complainants to the Appellate Court, and that said cause was heard by said Court at its November term, 1877, and that said Appellate Court reversed the decree of the Circuit Court dissolving said injunction and dismissing said bill, and remanded said cause, with directions to the Circuit Court to grant the prayer of complainant's bill, which said order of said Appellate Court is in the words and figures following, to-wit:

A.—FINAL ORDER OF APPELLATE COURT REVERSING DECREE OF CIRCUIT COURT.

STATE OF ILLINOIS,
Appellate Court, } ss.
Third District.

At an Appellate Court of the Third District, begun and held on Tuesday, the 20th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, to-wit:

Present—Chauncey L. Higbee, presiding Justice; Oliver L. Davis, Justice; Lyman Lacey, Justice.

The Township of Pana, John C. Hagler, Nelson Warren and D. E. Bogue, *vs.*

Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois; Thomas A. Ridgway, Treasurer of the State of Illinois; Amos A. Rhodes, Treasurer of Christian county, Illinois; William A. Kirkwood, County Clerk of Christian county, Illinois; William Tribbitt, Town Collector of the town of Pana; H. N. Schuyler, William E. Hayward, John Vidder, Wm. Houston, and the unknown holders and owners of bonds and coupons issued by town of Pana.

Appeal from Christian.

On this day come again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error. Therefore it is considered by the Court that for that error and others in the record and proceedings aforesaid, the decree of the Circuit Court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the Circuit Court with directions to grant the prayer of the bill. And it is further considered by the Court that the said appellants recover of and from the said appellees cost by them in this behalf expended, and that they have execution therefor.

I, George W. Jones, clerk of the said Appellate Court, Third District, do hereby certify that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause, of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Appellate Court, at Springfield, this 18th day of November, in the year of our Lord one thousand eight hundred and eighty-one.

(L. S.) Geo. W. Jones,
Clerk Appellate Court, Third District.

(Endorsed.) Filed June 20, 1882.
J. A. Jones, Clerk.

5th. The Court further finds from the evidence, that afterwards the defendants appealed from the decision of the Appellate to the Supreme Court of Illinois, and that said Supreme

Court affirmed said decision of the Appellate Court, which said decision of affirmance is reported in volume ninety-two of the Illinois Report.

6th. The Court further finds from the evidence that a final decree was entered at the November term of the Christian Circuit Court, A. D. 1879, in pursuance of the order and mandate of said Appellate Court; a certified copy of which said decree is in the words and figures following, to-wit:

B.—FINAL DECREE OF CHRISTIAN CIRCUIT COURT.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, } SS.
CHRISTIAN COUNTY.

IN CIRCUIT COURT, NOVEMBER TERM, A. D. 1879.

Pleas before the honorable Jesse J. Phillips, a judge of the fifth (5th) judicial circuit of the State of Illinois, and a presiding judge of the Circuit Court of Christian county, in the State aforesaid, and at a term thereof begun and held at the court house in the town of Taylorville, in said county, on the third Monday (being the 17th day) of November, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independance of the said United States the one hundred and fourth.

Present—Honorable Jesse J. Phillips, a Judge of the 5th Judicial Circuit of the State of Illinois; Vincent E. Foy, State's Attorney; Addison L. Clark, Sheriff.

Attest:

JOSIAH A. HILL, Clerk.

DECREE.

In the matter of the Town of Pana, *et al.*

vs.

Charles E. Lippincott, *et al.*

BILL FOR INJUNCTION, etc.

And, whereas, to-wit, on the 17th day of December, A. D. 1879, it being one of the regular days of the term of court aforesaid, and same officers present as on the first day of the term, the following decree was had and entered of record in rewards and figures following, to-wit:

The Town of Pana, *et al.*

vs.

Charles E. Lippincott, *et al.*

Now, to-wit, on this — day of November, A. D. 1879, comes this cause on again to be heard upon the bill, answer, mandate of the Appellate *and* Court. And, it appearing to the Court that all of the defendants were duly served with process and notified by publication of the pendency of said bill in due form of law, in accordance with the requirements of the statute in such case made and provided, and were amenable to the jurisdiction of the Court, and were by said court ruled to answer, and that the said H. N. Schuyler, Wm. E. Haywood, John Vidders and Wm. Houston, holders of bonds to the amount of, to-wit, —— dollars, together with the accompanying coupons, upon said bonds, amounting, to-wit, —— dollars, answered said bill; and, it further appearing to the Court from the bill and answer, that the bonds and coupons aforesaid were issued subsequent to the

2d day of July, A. D. 1870, to-wit, twenty of said bonds with accompanying coupons were issued on the 28th day of June, A. D. 1873; twenty of said bonds with accompanying coupons, on the 3d day of August, A. D. 1873; twenty of said bonds with accompanying coupons, on the 19th day of September, A. D. 1873; twenty of said bonds with accompanying coupons, on the 13th day of November, A. D. 1873, and twenty of said bonds with accompanying coupons, on the 6th day of December, A. D. 1873, making in the aggregate, one hundred thousand dollars of bonds, with interest coupons at eight per cent. payable semi-annually, on the first days of July and January of each year, said bonds to become due and payable in twenty years, or, at the option of the township, in five years.

It further appearing to the Court from the answer of said defendants, as well as from the allegations of said bill and the recitals in said bonds, that said bonds and coupons were issued by the supervisor and town clerk of said township, in compliance with the vote of the legal voters thereof, at an election held on the 30th day of April, 1870, by virtue of authority conferred by an act of the General Assembly of the State of Illinois, entitled, "An act to incorporate the Illinois Southeastern Railway Company," approved February 25, 1867, and an act amendatory thereof, approved February 24, 1869; and in accordance with the provisions of an act of said General Assembly, entitled, "An act to fund and provide for the payment of said sum of money and accruing interest thereon."

It further appearing to the Court that the act to incorporate the Illinois Southeastern Railway Company, approved February 25, 1867, conferred no power on said township to vote donation, and issue bonds in payment thereof, and that the act amendatory thereof, approved February 24th, 1869, conferred no authority upon said township to make donation and issue its bonds until the same should be voted for at a legal election, held and conducted and returns thereof made at general elections provided by law in this State.

It further appearing to the Court from the bill and answer, that the election aforesaid, held on the 30th day of April, 1870, was not held by the supervisor, assessor and collector, nor was the same held, conducted, and the returns thereof made as general elections, provided by law in this State and as required by said amendatory act; that on the contrary, that said pretended election was held, conducted, and returns thereof made as a town meeting, and said pretended election, instead of being presided over by the supervisor, assessor, and collector, the officers authorized and empowered to, said election was held and presided over by a moderator, said moderator having no jurisdiction, warrant, or authority to hold said election and to make returns thereof as required by law.

It further appearing to the Court that said township had no authority to issue said bonds by virtue of the charter of Pana, Springfield and Northwestern Railroad Company, or by virtue of any amendatory act thereof.

It further appearing to the Court that because of the premises aforesaid, that said township, on the 2d day of July, 1870, was inhibited from issuing bonds by virtue of section 2d of article 14, of the constitution of 1870, said section not being of the character mentioned in the *proviso* to said section two of article fourteen, of the constitution aforesaid, only saving and reserving the right of municipalties to make subscription where the same had been authorized under existing laws by a vote of the people of such municipality prior to such adoption.

It further appearing to the court from the bill and answer, that the questions presented by said bill and answer required a construction of the statutes and laws of the State of Illinois, under which the said Springfield and Illinois Southeastern Railway Company was incorporated, and under which the defendants to said bill claimed authority to issue said bonds, and section two of article fourteen, of the constitution aforesaid, and that the said acts of incorporation, amendments thereto, and the constitution aforesaid having been construed ——— Court, and there is no authority to make said donation, issue said bonds, and levy a tax upon the taxable property of said township for the payment thereof, and that said bonds and coupons were issued by the supervisor and town clerk without warrant or authority of law. It is therefore ordered, adjudged, and decreed by the Court, that the injunction heretofore issued in this cause be and the same is hereby made perpetual; and that said defendants holding said bonds, and those that have acquired said bonds pending the hearing of this bill, be and are hereby perpetually enjoined, under the pain of being adjudged in contempt of the decree of this Court, from in any manner selling, negotiating, or transferring said bonds and coupons, or any, or either of them, or from suing or attempting to sue upon said bonds or coupons, or any, or either of them, or from in any manner claiming, pretending, or insisting, either by themselves, their agents, or attorneys, in any Court of law or equity, or elsewhere, or in any manner whatever, that said township is liable upon said bonds.

It is further ordered, adjudged and decreed by the Court that said bonds are void, and that the same shall be held and esteemed for naught, and that the registration of said bonds in the office of the Auditor of Public Accounts of the State of Illinois, be, and the same is hereby, declared to be null and void, and said

Auditor of Public Accounts is required to cancel and annul said registration, and he and his successors in office perpetually enjoined from levying, attempting to levy, directing or attempting to direct the levy of a tax with which to pay said bonds and coupons, any or either of them. It is further ordered, adjudged and decreed by the Court, that the county clerk of the county of Christian, and State of Illinois, is perpetually enjoined from extending any tax upon the tax books of said township of Pana aforesaid, without any reference to the authority by which the same is directed to be extended for the payment of said illegal bonds and coupons, under pain, he and his successors in office, of being adjudged in contempt of the process of this Court.

It is further ordered, adjudged and decreed by the Court, that the collector of taxes of the town of Pana aforesaid, and the treasurer of the county of Christian aforesaid, they and their sucsuccessors in office, under pain of being adjudged in contempt of the decree of this Court, be and are hereby perpetually enjoined from collecting, or attempting in any manner to collect, any tax whatever off the taxable property of said township for the payment of said illegal bonds and coupons, any or either of them.

It is further ordered, adjudged and decreed by the Court, that the Auditor of Public Accounts of the State of Illinois draw his warrant in favor of W. J. Henry, one of the solicitors of the complainants, upon the treasurer or treasury of said State, for whatever amount of money may be in said treasury credited to said township on account of said illegal bonds and coupons, and that said Auditor take the receipt of the said Henry therefor, and that said treasurer, upon the presentation of said warrant by said Henry, or his endorser, pay the same, and that said payment shall be held and adjudged to be a sufficient accounting therefor.

It is further ordered, adjudged and decreed by the Court, that the treasurer of the county of Christian, and State of Illinois, he or his successor, pay over to the said W. J. Henry, one of the solicitors of said complainants, whatever money may be in the hands of said treasurer, or in the hands of his successor in office, collected off the tax-payers of the taxable property of the township of Pana aforesaid, for paying said illegal bonds or coupons, or any or either of them; and that said treasurer, or his successors aforesaid, take the receipt of the said Henry therefor, which is hereby declared to be a sufficient accounting therefor.

It is further ordered, adjudged and decreed by the Court, that said defendant, and each and every of them, within five days after being served with a copy of this decree by reading, shall surrender said bonds and coupons so held by them, under pain of being adjudged in contempt of the decree of this Court, to the supervisor of said township, whose duty it shall be to burn and destroy the same.

It is further ordered, adjudged and decreed by the Court that said defendants, viz., pay the costs of this proceeding, and that execution issue therefor.

It is further ordered, adjudged and decreed by this Court, that this decree is final, except that said complainants are at liberty hereafter to move for such further order or decree against the holders of said bonds and coupons as they may be advised by the Court is material or necessary.

I., N. D. Ricks, clerk of the Circuit Court of Christian county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of the final decree in a certain cause pending in said Court on the chancery side thereof.

wherein the Town of Pana et. al., plaintiffs, and Charles E. Lippincott et. al., were defendants. In witness whereof I have hereunto set my hand and affixed the seal of said Court at Taylorville, this 12th day of June, A. D. 1882.

N. D. Ricks, Clerk.

(Endorsed.) Filed June 20th, 1882.

(L. S.) J. A. Jones, Clerk.

7th. The Court further finds from the evidence that the bill of the Town of Pana and others, complainants as aforesaid, prayed that a preliminary injunction be issued by said Circuit Court, and that said defendants, and each of them, be perpetually enjoined from levying a tax with which to pay said bonds and coupons, and that said bonds and coupons be declared void, and that said owners and holders of said bonds be perpetually enjoined from in any manner selling, negotiating, or attempting to negotiate and sell said bonds, or suing, or attempting to sue on said bonds and coupons, or any, or either of them, or from in any manner claiming, or pretending, or insisting, either by their agents or attorneys, in any court of law or equity, or elsewhere, in any manner whatsoever, that said town is liable upon said bonds and coupons.

8th. The Court further finds from the evidence that interest was levied and collected, and paid by the State treasurer, as provided by law, for three years, on the said sum of one hundred thousand dollars of bonds.

9th. The court further finds that all of said bonds are of like tenure and effect, and that one of said bonds is of tenure following, to-wit:

C.—Copy of Bond of Town of Pana.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS—*Vignette*—County of Christian.

(No. 6.) Pana Township. ($1,000.)

Registered by Auditor of Public Accounts. Principal and interest collected and paid by the Treasurer of the State of Illinois.

Eight Per Cent. Railroad Bond.

Vignette—(Across the face in red.)—$1,000.

Know all men by these presents, that the township of Pana, in the county of Christian, and State of Illinois, acknowledges itself indebted to the Springfield and Illinois Southeastern Railway Company, or bearer, in the sum of one thousand dollars, with interest from the date hereof, at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July of each year, at the agency of the State Treasurer of the State of Illinois in New York city, on the presentation and surrender of the respective interest coupons hereto attached. The principal of this bond shall be due and payable after five years, and within twenty years of the date hereof, at the option of said township, at said agency in the city of New York. This bond is one of a series amounting to one hundred thousand dollars issued by said township in compliance with the vote of the legal voters thereof, at an election held on the 30th day of April, A. D. 1870, under and by virtue of the authority conferred by an act of the General Assembly of the State of Illinois, entitled, "An act to incorporate the Illinois Southeastern Railway Company," approved February 26th, 1867, and an act amendatory thereof, approved February 27, 1869, and in accordance with the provisions of an act of said General Assembly, entitled, "An act to fund and provide for paying the railroad debts of counties, cities, townships and towns," in force April 16th, 1869. And for the payment of said sum of money and accruing interest thereon, in the manner aforesaid, the faith of the said township of Pana is hereby irrevocably pledged, as also its property, revenue and resources.

(On right and left margin,) 1,000 dollars—1,000 dollars.

In testimony whereof, the said township of Pana has caused these presents to be signed by its supervisor, and countersigned by its clerk, this twenty-eighth day of June, A. D. 1873.

Erwin Sanders, Clerk.

Grove P. Lawrence, Supervisor.

In testimony whereof, the said township of Pana has caused these presents to be assigned by its supervisor, and countersigned by its clerk, this 28th day of June, A. D. 1873.

Erwin Sanders, Clerk.

Grove P. Lawrence, Supervisor.

10th. The Court further finds that the coupons sued upon became due and payable as follows, to-wit: On the first day of January and of July of each year, from January, 1876, up to the commencement of this suit, and that plaintiffs were the holders of said coupons at the time of the commencement of this suit.

Copy of Coupons Sued On.

(Across the face in red ink:) 10.

(On margin:) $40.

The township of Pana, Christian county, Illinois, will pay the bearer forty dollars on the first day of January, 1878, at the agency of the State treasurer, in the city of New York, it being six months' interest on bond No. 2.

Grove P. Lawrence, Supervisor of said Township.

The township of Pana, Christian county, Illinois, will pay the bearer forty dollars on the 1st day of July, 1878, at the agency of the State treasurer, in the city of New York, it being six months' interest on bond No. 2.

GROVE P. LAWRENCE, Supervisor of said Township.

(Across the face in red ink:) 11.

(On Margin:) $40.

11th. The Court further finds that there was no other evidence upon which to base further findings of the Court.

Thereupon the Court gave judgment for the plaintiff, to which findings and ruling the defendant excepted, and asked that said findings be made a part of the record in this case, which was accordingly done, trial by jury being expressly waived by an agreement in writing.

ASSIGNMENT OF ERRORS

By Plaintiff in Error.—P. 32 Record.

1st. The Court erred in rendering judgment in favor of the defendants in error and against the plaintiff in error.

2d. The Court erred in rendering judgment on coupons in controversy, there being no authority under the charter of the Springfield and Illinois Southeastern Railway Company to hold an election and issue bonds to the amount of one hundred thousand dollars.

3d. The Court erred in holding that the pretended election of the 30th of April, A. D. 1870, presided over by a moderator and town clerk, conferred authority upon the supervisor and town clerk to issue bonds and coupons.

4th. The Court erred in holding that the plaintiffs were entitled to recover, the bonds not having been legally voted, and being issued after the taking effect of section 2 of article 14 of the constitution of 1870.

5th. The Court erred in rendering judgment for the plaintiff after the bonds were declared null and void by the decree of the Circuit Court of Christian county, Illinois, entered under a mandate of the Appellate and Supreme Courts of that State.

6th. The Court erred in finding for the plaintiff on coupons in controversy, said bonds having been illegally issued, and there being no evidence that plaintiffs purchased the same *bona fide* for value before due, the burden of proof being upon the plaintiffs.

7th. The Court erred in rendering judgment for the plaintiffs and against the defendants upon the coupons for the sum of seven thousand two hundred and seventy-two dollars and two cents, the amount of said coupons and interest being only six thousand seven hundred dollars and eighty cents ($6,700.80).

STATEMENT OF THE CASE.

This was a suit in assumpsit, brought by the defendants in error at the June term of the United States Circuit Court, A. D. 1882, on coupons from bonds issued by the town of Pana, Christian county, Illinois, to the Springfield and Illinois Southeastern Railway Company, payable at the agency of the State Treasurer of the State of Illinois, in New York City. The principal of said bonds is due twenty years from the date thereof, or at the option of the town of Pana after five years.

They were a part of a series of $100,000, issued by the supervisor and town clerk on a vote of the electors of the town of Pana, held April 30, 1870, at which a large majority of the voters were in favor of a donation of $100,000 to said railroad, and the issue of the bonds to pay for the same. The coupons in this suit were cut from the first $20,000 of bonds issued by the town of Pana under this vote of the electors. They were issued under an act of the Legislature of the State of Illinois, recited in the bonds as "An act to incorporate the Illinois Southeastern Railway Company," approved February 26, 1867, and an act amendatory thereof, approved February 27, 1869, and in accordance with the provisions of an act of the General Assembly, entitled "An act to fund and provide for paying the railroad debts of counties, cities, townships and towns," in force April 16, 1869.

These bonds were all registered by the State Auditor, on sworn statements of the supervisor that all conditions precedent had been complied with before their issue, and as the law had been complied with, that they were entitled to registration.

The interest on them, from date of their issue in 1873, was duly collected and paid by the State Treasurer for three years. The defence to the bonds is, chiefly, that there was no election that warranted their issue; that there were constitutional inhibitions against their issue, and that the State Courts had passed upon them and declared them void.

The plaintiffs in the suit in the United States Circuit Court insisted that there was full and ample power to issue the bonds; that the election was a valid one, and that they, not being parties to the suits in the State Courts, were not in any way concluded by their decrees.

The United States Circuit Conrt gave judgment for the plaintiffs on their coupons for $7,272.02, from which the defendants appeal on writ of error to this Court.

ARGUMENT FOR DEFENDANTS IN ERROR.

May it please the Court:

The principal question in this case is, was there sufficient power granted in the charter and amendment to the Springfield and Illinois Southeastern Railway Company, to issue the bonds and coupons in controversy in this suit, and was that power legally exercised in the vote for these bonds, April 30, 1870? An affirmative answer to this question settles the whole controversy.

The charter in force February 26, 1867, section 9, says: "Any town in any county under township organization, is hereby authorized and empowered to donate to said company any amount not to exceed thirty thousand dollars: *Provided*, that no such donation by any such town to said company shall be made unless the question of making such donation shall have been first submitted to the legal voters of such town, at an election hereafter to be provided for. *And, provided further*, that no donation so made, nor any part thereof, nor any interest accruing thereon or upon any part thereof, shall be paid, or become due and payable, to said company, until said company or its assigns or employés shall have completed their said railroad, or some certain part of said road, or its branch, as may have been agreed upon by the contracting parties."

In the amendatory act, in force February 24th, 1869, section 10, in the *second proviso*, and fourth line, we find, "And if a majority of the votes cast at such election, shall be in favor of such subscription or donation, then the corporate authorities of such village, city, county or *township*, organized under the township organization laws of this State, the supervisors of such township shall subscribe to the capital stock of said company, or *donate thereto, as shall have been determined at such election, the amount so voted at such election, and shall issue the bonds,* with interest coupons attached, of such village, city, county or *township* to said railroad company, in such denominations as said railway company may designate, * * * and said bonds to be signed * * * *in case of a township, by the supervisor thereof, and countersigned by the clerk.*"

In the charter the amount is limited to $30,000, and in the amendment, to *the amount so voted at the election.*

There is ample power in the charter and amendment for the issue of the whole amonnt of $100,000 of bonds by the town of Pana on vote of its electors, complying with the conditions of the election as therein stated. Its own officers, in five affidavits filed when these bonds were registered, swore that all necessary precedents had been complied with by the railroad company when the bonds were issued.

Record, p 12, 13, 14 and 15.

There is no pretense of any fraud in their issue, or any failure of the railroad company to comply with all the precedent conditions demanded by the laws granting the issue of the bonds.

The amendatory act gives power to issue the amount voted at the election, and the supervisor in towns under township organization—and the pleadings admit that Pana was such a township—to donate or subscribe such amount as was so voted by the electors, to the railroad company, and to issue bonds for the payment of the same, signed by the supervisor and countersigned by the clerk of such town. In respect to the amount issued and the kind of bonds, the law was literally complied with in every particular. The amount voted for at the election of April 30th, 1870, was $100,000.

Record, p 16.

The vote was 438 votes for the donation, and 24 votes against the donation of $100,000, to the Springfield and Illinois Southeastern Railway Company.

Record, p 19 and 20.

The bonds as to form were issued in strict conformity with the law.

Record, p. 10.

As to the power to issue bonds, in payment of a donation or subscription, under this charter and amendment, on a vote of the electors for that purpose this Court has frequently affirmed that power. In two similar cases the whole question of the power to issue bonds under these statutes has been fully argued and settled, and such bonds held good.

Harter vs. *Kernochan*, Otto, 103, p. 562.

Bonham vs. *Needles*, Ibid. 648.

In *Harter* vs. *Kernochan*, p. 574, this Court say: "The act incorporating the Illinois Southeastern Railway Company, the act amendatory thereof, and the act in relation to the Pana, Springfield and Northwestern Railway Company (even if the general statutes of the state were not sufficient for the purpose) fully authorized the consolidation between those two companies, and upon such consolidation the new company succeeded to all the rights, franchises and powers of the constituent companies. The power in the township to make a donation to aid in the construction of the Illinois Southeastern Railway was also a privilege of the latter corporation, and that privilege, upon the consolidation, passed to the new company."

This settles the question of power to issue the bonds under these statutes, on a vote of the people of the township, and fully authorizes the $100,000, or the amount voted for by the town of Pana, April 30th, 1870, under the provisions of the amendatory act. This act has been passed upon in the last two cases above cited and held valid, and the powers it granted have been sustained. If a valid act as to time and manner of issuing bonds, and the parties to whom issued, it must be held valid as to *the amount so issued.* If the town had power under this act to issue bonds at all, on a vote of the electors in payment of donations or subscription, they had the power to issue *such amounts as were so voted for*, as that is the express language of the act. The extent of the amendment was not only as to manner of payment of donations and subscriptions, and of holding elections, but also as to the amounts to be voted upon by the electors, and the bonds to be issued thereon.

The coupons involved in this suit have the full sanction of both the charter and the amendatory act, and must be held valid obligations of the town of Pana, as they are all from bonds *under No.* 30, and a part of the first $20,000 of bonds issued by that town.

Record, pp. 2 and 3.

The constitutionality of the charter and amendatory acts involved in this suit has been passed upon by this Court and cannot now be questioned.

In *Harter* vs. *Kernochan*, 103 U. S., p. 573, this Court say: "For the reasons stated we are of opinion that the acts of February 25th, 1867, and February 24th, 1869, are not in violation of the constitution of the state." These same statutes are construed and the same doctrine affirmed in *Bonham* vs. *Needles*, 103. U. S., p. 648, and *Louisville* vs. *Savings Bank*, 104 U. S., p. 469.

The election of April 30, 1870, under which the $100,000 of bonds were issued by the town of Pana, was held in strict conformity with the powers granted in the charter and amendatory acts, and the laws of the State of Illinois in reference to township elections.

The stipulations on which the findings were based, admit "that a petition to the town clerk, signed by more than twenty legal voters, asking said town clerk of Pana township to order an election to be held on the 30th day of April, 1870, to determine whether said township would donate to the Springfield and Illinois Southeastern Railway Company the sum of $100,000 in bonds, to become due in twenty years from date, or, at the option of the township, within five years from date, with interest at the rate of eight per cent. per annum, interest payable semi-annually. It is further mutually agreed that on April 30, A. D. 1870, *an election was held in said township, in pursuance of said petition and notice given according to law*, presided over by a moderator and town clerk."

Here it is admitted that the election was held on a petition and notice *given according to law*. The only ground of complaint as to the validity of this election, by the plaintiff in error, is that it *was presided over by a moderator and town clerk*, and that it is a void election because not presided over by the supervisor, assessor and collector, *ex-officio* judges of the election.

In Hurd's Revised Statutes of Illinois, 1880, page 477, section 33, we find: "In counties under township organization, where the county board shall have divided a town into several election districts, it shall, at its last regular session preceding the general election, appoint three capable and discreet electors to act as judges of election in each election district in such town, and may at any time fill vacancies: *Provided*, that the supervisor, assessor and collector shall be designated as judges of election in the district in which they respectively reside."

Section 36, Ibid. is as follows: "If at the time for the opening of any election any person appointed or constituted a judge of election shall not be present, or will not act, or take the oath to act in such capacity, the judge or judges present may appoint some other qualified elector to act in his place. If there be no judge of election present, or he refuses to act, such electors of the precinct or district as may then be present at the place of election, may fill the places of such judges by election from their number. The judges so appointed shall have the same power, and be subject to the same penalties, as other judges of election."

Under the township organization laws, we also find: Hurd's Statutes, 1880, p. 1082, Sec. 6. "The supervisor, assessor, and collector of the town, shall be *ex-officio* judges of all elections in their town, *except as otherwise provided by law*. And in p. 1084, Sec. 62, *supra*: *Organizing a town meeting—moderator*.—§ 2. "The electors present at any time between the hours of eight and nine o'clock in the forenoon of the day on which there is an *annual or special* town meeting, shall be called to order by the town clerk, if there be one; in case there be none, or he is not present, then the voters may elect by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting."

Laws 1861, p. 223, Sec. 1.

As far as the election of April 30, 1870, is concerned, the proceedings in the choice of a moderator were strictly in accordance with the above law for organizing a town meeting. An annual meeting must be what would be called a *general election*, as opposed to a *special election, or town meeting*, called at any time on due notice, but the language of the above law gives the electors present *either at an annual or special town meeting*, between the hours of eight and nine o'clock of the forenoon—if the *ex-officio* judges of the election are not present—the privilege of electing a chairman by acclamation, and then to proceed to choose *one of their number to preside as moderator.*

Then, as far as this case is concerned, it does not matter whether it was a general election or special town meeting, as the electors have, in the absence of the *ex-officio* judges, the right to elect a moderator in either case. Any other view would lead to the absurd position that no meeting of the township, either annual or special, could be held unless the *ex-officio* judges were there and were willing to preside. The view that counsel for plaintiff in error contend for, as to this election, would put all power of the township in the hands of the *ex-officio* judges, instead of in the hands of the electors, where it rightly belongs. This law, for the organization of township town meetings, is as valid and binding as any law for general elections, both having eminated from the same source.

The record shows, p. 19, that, "The meeting was called to order by *A. B. Corman, town clerk. On motion of Dr. Finley, J. W. Stark was chosen moderator, he being sworn by the town clerk.*

This was literally in accordance with the statute, in the absence of the *ex-officio* judges of the election, or their refusal to act. Had they been present, and ready to act, and were in any way, by force or fraud, prevented from so doing, the town of Pana would have had proof of the fact in this case. The fair presumption, and only inference in the case—due lawful notice of the time and place of the election having been given—is that the *ex-officio* judges were absent, or refused to act, and that the electors exercised their lawful privilege, and chose their moderator, and that the election was in every view of the case lawful and valid.

The amendatory act of February 24, 1869, which this court has several times passed upon, and has held constitutional, and has held bonds issued thereunder valid obligations of the towns that issued them, and especially in the *Harter* vs. *Kernochan,* and *Bonham* vs. *Needles* cases, *supra.*, in Section 10, says, that *whenever* twenty legal voters of any such city, village, county or *township* shall present to the clerk thereof a written application requesting that an election shall be held to determine whether such village, city, county or township shall subscribe to the capital stock of said company, or make a donation thereto, etc., * * such clerk shall receive and file such application, and *shall immediately* proceed to post written or printed notices, calling an election to be held by the legal voters, etc., * * and such election shall be held and conducted, and returns thereof made, as general elections provided by law in this State, and as provided by the charters of any such village or city: *Provided,* that at any election held under the provisions of this act, it shall not be necessary to cause a registration of the voters. * * *

This act must be construed as a whole, and it is clearly manifest that annual or general elections cannot be referred to, for they occur but once a year, and this act says: That *whenever twenty legal voters* shall petition the clerk, etc., and that on receiving and filing the petition, he *shall immediately* proceed to give the requisite notice for the election. This language can only refer to special elections liable to be legally called at any time on the presentation of the proper petition.

And again, the registration [of the voters, which is necessary for an annual election, is especially provided against, which would not have been necessary if an annual election only had been contemplated by the framers of this act. The language used in reference to the manner of the election, where it says, "And such elections held and conducted, and returns thereof made as *general elections* provided by law in this State,"—can only mean *as such town elections are generally held, conducted, and returns made*—refering more to the general manner of holding town elections, than to the manner of holding and conducting the annual elections, which are general as to time all over the State. This view harmonized the act in all its parts as to the election, and we think is the only interpretation that can be given it.

And again, the annaul town meeting is held on the 1st Tuesday of April in each year, and a notice of at least *ten days* is required.

Hurd's Revised Statutes, 1880, p. 1082, § 51, 52.

This amendatory act of February, 24, 1869, requires thirty days notice preceding the election, (section 10) and cannot possibly refer to an annual or general election.

The act of incorporation of February 26, 1867, in reference to county donations, says,—"The question of donation shall have been submitted to the legal voters of such county, at an election to be called, conducted, and returns made, canvassed and published in the usual manner of calling, conducting, making returns, canvassing and publishing *special county elections.*

Private Laws of Illinois, Vol. 2, p. 752, Sec. 7.

In reference to *town elections—Ibid,* section 10, the language is,—"And the election herein provided for shall be held, canvassed, and returned as other regular town elections."

In the amendatory act to the Pana, Springfield and Northwestern Railroad Company—Vol. 3, Private Laws, 1869, p 331, section 8—the language is, "and the vote shall be taken at any time after thirty days notice of the time and place of voting." All these statutes clearly imply that a special election was intended and to be held, conducted, canvassed, and returns made as in special town meetings.

If there is any force in the arguments of the counsel for the plaintiff in error in reference to this election, it cannot defeat these bonds, and is at best only an irregularity, as the people were in no way injured thereby, nor do they claim that there was any fraud connected therewith. It was, in any view that may be taken, a substaintial compliance with the statute.

East Lincoln vs. *Davenport*, 94 U. S. 801.
Commissoners vs. *January,* 94 U. S. 205, and cases cited.
East Oakland vs. *Skinner,* 94 U. S. 258.
County vs. *Nicholy,* 95 U. S. 119.
Town vs. *Strong,* 96 U. S. 271.
County vs. *Ray,* 96 U. S. 675.
County vs. *Cromwell,* 96 U. S. 51.
San Antonio vs. *Mahoffy,* 96 U. S. 313.
Prettyman vs. *County,* 19 Ill. 406.
Johnson vs. *County,* 24 Ill. 90.

But we think this court has fully settled this question as to the validity of the election of April 30th, 1870,—in the *Horter* vs. *Kernochan case, supra,* where it held the bonds good that were voted *the tenth day of November*, 1868, under the provisions of the act of February 25, 1867, and the amendatory act of February 24th, 1869. The election in the *Horter* case was held on November 10th, 1868, and could not have been a general, or annual election, but was a special election under the same laws that the town of Pana voted the $100,000 involved in the suit at bar.

Counsel for plaintiffs in error insist that the state law, as construed in the cases of the *People* vs. *Santa Anna*, 67 Ill., 57; *The People* vs. *Town of Lena*, 67 Ill., 66, and *Lippincott* vs. *The Town of Pana*, 92 Ill., 26, was the Supreme Law of the State of Illinois, at the time these bonds were issued as to elections. That the opinions in case of the two former were filed at the January term, 1873, and the bonds in controversy were not issued until the summer and fall thereafter. This Court has frequently met with these two wonderful cases before, and treated them as they deserved. They were entirely different cases from the one at bar. Arrising on an application by the railroad company to compel these towns to issue—after they had the road built—bonds which they had promised by a former vote of the people. In these cases the rights of innocent third parties had not yet accrued. They commenced early to defraud the railroad out of the bonds they had contracted to pay for the road, instead of issuing the bonds and then repudiating them in the hands of innocent purchasers. The *Lippincott* vs. *The Town of Pana* involved the same issue of bonds now presented in this. The *settled law* on the bond question in Illinois has been to hold everything in relation to bonds and their issue valid, *during the debt contracting period, and everything void since the debt or bond paying period commenced.*

It is sufficient to say that this court has frequently overruled the doctrine of these cases, and *since they were published.* They were filed at the January term, 1873. This Court has passed upon this same question, *and the identical laws involved in the Lippincott* vs. *Town of Pana* case, in *Harter* vs. *Kernochan,* 103 U. S., 562, Oct. 1880; *Bonham* vs. *Needles,* Ibid. 648, Oct. 1880; and *Louisville* vs. *Savings Bank,* 104 U. S., 469, Oct. 1881.

PROCEEDINGS IN THE STATE COURT, AND EFFECTS THEREOF UPON THE DEFENDANTS IN ERROR.

The parties to the bill in chancery in the State Court were The Town of Pana, John C. Hagler, Nelson Warren and D. E. Bogue, on behalf of themselves and all other tax-payers of the township, *vs.* Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois; Thomas S. Ridgway, Treasurer of the State of Illinois; Amos A. Rhodes, Treasurer of Christian county, Illinois; Wm. Pubbitt, Town Collector of the town of Pana; H. N. Schuyler, Wm. E. Hayward, John Vidder, Wm. Houston, *and the unknown holders and owners of said bonds and coupons issued by the town of Pana.*

That said Schuyler, Hayward, Vidder and Houston appeared and answered the bill, and moved the court to dissolve an injunction that had before that time been issued in said cause. Record, page 9.

There is no claim that the defendants in error were ever named in any of the proceedings in the State Court as parties to the proceeding in any other way than *as unknown holders and owners of the bonds and coupons of the town of Pana.* There is no evidence even of notification by publication, save in the final decree, which says: "And it appearing to the Court that all of the defendents were served with process, and notified by publication of the pendency of said bill in due form of law, in accordance with the requirements of the statute in such cases made and provided, and were amenable to the jurisdiction of the Court, and were by said Court ruled to answer, and that said H. N. Schuyler, William E. Hayward, John Vidder and Wm. Houston, holders of bonds to the amount of, to-wit, —— dollars, together with the accompanying coupons upon said bonds, amounting to, to-wit, —— dollars, answered said bill." Record, page 25.

With no personal service whatever upon, or appearance in, any of the proceedings in the State Courts by the defendants in error, the counsel for plaintiffs in error insist that they were *parties* to those proceedings under the jurisdiction of the State Courts, and are bound by the findings of the State Courts in their decrees. If this be true it is a monstrous doctrine, and pregnant with fraud and the grossest injustice.

But this is not the law. The defendants in error were not served with personal process, and never voluntarily or otherwise appeared in the State Courts, or in any way submitted to its jurisdiction. They are not bound by its decrees. They were citizens of Vermont, a different State from Illinois, and have, under the constitution and laws of the National Government, a right to have their contracts with the citizens of the town of Pana, Illinois, construed and settled by the Federal Courts.

No state can exercise direct jurisdiction and authority over persons or property without its territory.

Story, Conflict Laws, c. 2, Wheat. Int. Law, pt. 2, c. 2.

It is laid down by jurists as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either person or property to its decisions. *Any exertion of this sort beyond this limit is a mere nullity, and incapable of binding such persons or property in any other tribunals.*

Story, Conflict Laws, Sec. 539.

If without personal service judgments in *personam*, obtained *ex-parte against non-residents and absent parties upon mere publication of process*, which, in the great majority of cases, would never be seen by the parties intended, could be upheld and enforced, they would be the constant instruments of fraud and oppression.

Pennoyer vs. *Neff*, 95 U. S. 726.

If there is a total want of jurisdiction the proceedings are void, and a mere nullity, and confer no right and afford no jurisdiction, and may be rejected when drawn in question.

Service by publication can only give jurisdiction over property seized by the officer of the Court, and not over the person.

Harvey vs. *Tyler*, 2 Wallace, 345.

In the case at bar there was no personal service, nor attachment of any property, and the State Court proceedings are void, and a mere nullity as far as defendants in error are concerned.

Jurisdiction of the person is obtained by the service of process, or by the voluntary appearance of the party in the progress of the cause.

Jurisdiction of the *res* is obtained by a seizure of property under process of the court, whereby it is held to abide such order as the court may make concerning it. The power to render the decree or judgment which the court may undertake to make in the particular cause, depends upon the nature and extent of the authority vested in it by law, in regard to the subject matter of the cause.

This right (of jurisdiction) has reference to the power of the court over parties—over the subject matter, over the *res* or property in contest, and to the authority of the court to render the judgment or decree which it assumes to make.

Cooper vs. *Reynolds*, 10 Wallace, 316, 317, and cases cited.

The validity of every judgment depends upon the jurisdiction of the court before it is rendered; not upon what may occur subsequently.

Pennoyer vs. *Neff*, 95 U. S. 728.

An action in the Circuit Court of the United States for Louisiana, brought upon a judgment rendered in New York under a State statute, against two debtors, *only one* of whom had been served with process, the other being a non-resident of the State, the Circuit Court held the judgment conclusive and binding upon the non-resident not served with process; but the United States Supreme Court *reversed its decision*, observing: "That it was a familiar rule that countries foreign to our own disregarded a judgment merely against the person, where the defendant had not been served with process, nor had a day in court—that national comity was never thus extended; that the proceeding was deemed an illegitimate assumption of power, and resisted as mere abuse; *that no faith and credit or force and effect had been given to such judgments by any State of the Union, so far as known—and that the State courts had uniformily, and in many instances held them to be void.*"

D'Arcy vs. *Ketchun*, 18 Howard.

The act of Congress was not designed to displace that principle of natural justice which requires a person to have notice of a suit before he can be conclusively bound by its results, nor those rules of public law which protect persons and property within one State from the exercise of jurisdiction over them by another.

The Lafayette Insurance Co. vs. *French et al.*,
18 Howard, 404.

The courts of the United States are not required to give effect to judgments of this character when any right is claimed under them. While they are not foreign tribunals in their relations to the State courts, they are tribunals of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State courts only the same faith and credit which the courts of another State are bound to give to them.

Pennoyer vs. *Neff*, 95 U. S. 732, 733.

For any other purpose than to subject the property of a non-resident to valid claims against him in the State, *due process of law would require appearance or personal service, before the defendant could be personally bound by any judgment rendered.*

Constitutional Limitations, Cooley, 405.

Process sent to him (non-resident) out of the State, and process *published within it*, are equally unavailing in proceedings to establish his personal liability.

Pennoyer vs. *Neff*, 95 U. S. 727.

A judgement by the court of a State, against a citizen of such State, in his absence and without any notice, express or implied, would, as is presumed, be regarded in every external jurisdiction, as absolutely void and unenforceable. Such would certainly be the case if such judgment was so rendered against the citizen of a foreign State.

Thompson vs. *Whiteman*, 18 Wall. 469.

From the above citation, it is clear that the defendants in error were *not parties* to the State court proceedings, and are in no way bound by its proceedings.

We especially refer to *Pennoyer* vs. *Neff,* 95 U. S. 714; *Thompson* vs. *Whiteman,* 18 Wall. 457; *Brooklyn* vs. *Ins. Co.,* 99 U. S. 362, and *Empire* vs. *Darlington,* 99 U. S. 87, which fully decide this question.

Acts of Supervisor binding on the Towm.

We accept the law as laid down in *Harding County R. R. Co.,* 65 Ill., 92, cited by counsel for plaintiff in error. The Court says: "That the supervisors, when they exercised the functions given by the statutes, the power granted must not only be clearly conferred, but strictly pursued." The supervisor and town clerk did exactly what the amendatory act of February 24th, 1869, cammanded, and in strict obediance to all its requirements.

The act says: "The supervisors of such townships shall subscribe to the capital stock of said company, or donate thereto, as shall have been determined at such election, the amount so voted at such election, and shall issue bonds, etc., to be countersigned by the clerk."

Vol. 3, Private Laws of Illinois, 313.

The amount so voted at the election, April 30th, 1870, was $100,000, and that amount of bonds were issued, and in form exactly as the above act required. No supervisor ever carried out the instructions of the law giving him power to act more literally, and the town is debarred from denying his authority to act as it is admittted. The signatures of the supervisor and clerk are genuine (Record, p. 10), and they issued the $100,000 of bonds in controversy.

The supervisor and clerk were the officers of the town, to execute and issue the bonds for the corporation by the special acts granting the power, and also by the laws of Illinois.

The Chicago, Danville and Vincinnes R. R. Co. et al. vs. *Smith,* 62 Ill. 268.

It was the duty of these "corporate authorities" to determine whether the vote has been taken as directed by law, and what the vote was.

Town of Coloma vs. *Eaves,* 92 U. S. 484.
Humboldt Township vs. *Long,* 92 U. S. 642.
Pendleton County vs. *Amy,* 13 Wall. 305.

When a particular public officer is clothed with the duty of deciding such a question, in the absence of fraud or collusion, his decision is final. It is not open for examination, and neither party can go behind it. These officers in the case at bar did so decide in the issue of the bonds and in sworn statement to the Auditor for registration.

Lynde vs. *The County,*16 Wall. 13.
Walnut vs. *Wade,* 103 U. S. 683.

In construing a similar statute, passed under the constitution of 1848, the Supreme Court of Illinois has decided that after a vote of the electors of a township in favor of a donation to aid in the construction of a railroad, the supervisor and clerk of the township were the proper corporate authorities to subscribe for the stock of the company, and issue the bonds of the township therefor.

Wade vs. *Walnut,* 103 U. S. 693.
Town of Windsor vs. *Hallett,* 97 Ill. 204.
Town of Douglass vs. *Niantic Savings Bank.*

THE RECITALS AND THEIR EFFECT.

Counsel for the plaintiff in error, argue from the standpoint that there was no constitutional and statutory authority to issue these bonds, and no valid election, and hence no *bona fide* holding. That there being no power to contract, the recitals are of no value even in the hands of an innocent holder for value, and hence his citations are not applicable or of any force. For as above stated, the question of power to issue under the acts of February 24th, 1867, and February 25th, 1869, and elections thereunder has been fully settled. Therefore the defendants in error are entitled to the full benefit of the recitals as innocent holders and owners for value before due. Record, 10.

The recitals on the bonds are very full, *even to irrevocable pledging the faith, property, revenue and resources* of the town of Pana, for their payment. Record, p. 5.

The town having voted the bonds, and the officers having issued them, the State Auditor having registered them on sworn statements that conditions precedent had been complied with, made by the supervisor, and the town having regularly paid the interest for three years without complaint, it is estopped from denying their validity.

Stephenson vs. *Schenck*, 5 Wall. 772.
Horter vs. *Kernochan*, 103 U. S. 562.
Bonham vs. *Needles*, 103 U. S. 648.
Buchanan vs. *Litchfield*, 102 U. S. 278.
County vs. *Amy*, 13 Wall. 305.
Knox vs. *Aspinwall*, 21 How. 539.

Counsel for the plaintiff in error insist that the burden of proof to establish *bona fide* ownership for a valuable consideration, is upon the defendant in error. Perhaps, in a case where there was no power whatever to issue the bonds, in some cases this might be true, but not in this case, as we have established above by several decision of this court, that *there was full and ample power to issue the bonds, the acts under which they were issued, and bonds thereunder held valid by this Court*, and hence are entitled to the full benefits of *bona fide* holders and owners of the coupons in controversey.

Bissell vs. *Jeffersonville*, 24 How. 287.
Myers vs. *Muscatine*, 1 Wall. 384.
Marcy vs. *Oswego*, 92 U. S. 638.
Town of East vs. *Davenport*, 94 U. S.
Clay County vs. *Society for Savings*, U. S. Court, Oct. Term, 1881.

Bona fide holders of the bonds are not bound to look beyond the recitals and the legislative enactments under which they were issued.

Walnut vs. *Wade*, U. S. 103, 683.

IS THE FEDERAL COURT BOUND TO FOLLOW THE STATE COURT DECISIONS IN THIS CASE?

We admit, as a general rule, that this Court will follow State Court decisions in the construction of their local statutes and constitution, where local questions are involved and where there is no commercial on Federal question involved.

To say in a case of this kind that the State Court decision was conclusive of the rights of these parties, would be to deny the defendants in error a right guaranteed them by the constitution and the laws of the Federal Government. Being citizens of different States they have the right to have their controversy adjudicated by the Federal Courts, even when that controversy arises under laws in force, and passed by State Legislation.

The doctrine of *stare decisis* is pregnant with more injustice and evil consequences than any other in the history of jurisprudence, and is constantly increasing the danger as Courts become crowded with important cases.

This Court is not bound by the decisions of the State Courts in cases where negotiable securities are involved, and the defendants in error have the right to ask this Court for its decision on the merits of the case, and wholly independent of the State Court proceedings.

In *Supervisors* vs. *Schenck,* 5 Wall. 784, the Court say: "Attention to the fact that in a recent case not yet reported, the Supreme Court of the State of Illinois have held that these bonds are void, even in the hands of an innocent holder, but inasmuch as the power to issue the bonds were fully conferred by law, the question of their validity in the hands of an innocent holder without notice, is a question of *commercial law,* while the adjudications, although entitled to great respect, do not furnish the rule of decision in this Court."

And to the same effect, *Swift* vs. *Tyson,* 16 Peters 19.

The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Manfield, in *Luke* vs. *Lyde,* 2 Burr. R. 882–887, "to be, in a great measure, *not the law of a single country only, but of the commercial world.*"

And on the same subject and to the same effect:

Gilpecke vs. *Dubuque,* 1 Wall. 206.
County of Warren vs. *Marcey,* 97 U. S. 103.
Roberts vs. *Bolles,* 101 U. S. 129.
Pine Grove vs. *Talcott,* 19 Wall. 666.
Livingston County vs. *Darlington,* 11 Otto. 410.

A decision of the State court is not conclusive, where private rights are determined by the rules of the common law on commercial paper.

Bailey vs. *City of Muscatine*, 8 Wall. 584.

The decisions of the Supreme Court of the State of Illinois, in cases arising upon the same statute, and a similar state of facts, are not conclusive on this court, as such decisions do not present a case of statutory construction.

Town of Venice vs. *Murdock*, 92 U. S. 494.

All the assignments of error, we think, are disposed of in the above, save No. 7, which is, "That the court erred in rendering judgment for the plaintiffs and against the defendants, upon coupons for the sum of $7,272.02, the amount of said coupons and interest being only $6,700.80."

These coupons were payable in New York, and the holders, in case of default, were entitled to the rate of interest that was payable in that State, which was seven per cent. per annum.

Record p. 10.

Power to issue bonds carries with it authority to the municipal officers to make the bonds and coupons payable in another State, and to sell them in another State.

16 Wall. 13.

And where they are made payable in another State, the holder will be entitled to exchange on the place of payment, at the established rate, and the coupons, from the time of their presentation, will (if not redeemed) bear the legal rate of interest of the place where they are made payable.

1 Wall. 206.
1 Dillon's Rep. 530.

In accordance with that law, we insist that the judgment is correct, and that the computation is accurate as made by the Court, $7,272.02.

But in any event it is too late in this Court to claim any advantage upon a question of fact, under special findings of the United States Circuit Court, on an appeal to this Court. This Court will not go back of the special finding of the Circuit Court to investigate questions of fact, and such only is the one here raised as to the amount of the judgment. It is only as to *questions of law* involved that this Court will give attention as to whether the law was sufficient on their special findings to sustain their judgment. A jury being specially waived in this case, the Court does the work of the jury in ascertaining the amount of the judgment, which is purely a matter of fact, and has nothing to do with the questions of law upon which the judgment is based.

In *Norris* vs. *Jackson*, 9 Wall. 125, this Court said: "A special finding is not a mere report of the evidence, but a statement of the ultimate facts on which the law of the case must determine the rights of the parties—a finding of the propositions of fact which the evidence establishes, and the evidence on which those ultimate facts are supposed to rest. Whether the finding be general or special, it shall have the same effect as the verdict of a jury—*that is to say, it is conclusive of the facts so found.* In the case of a special verdict (finding), the question is presented as it would be if tried by a jury, whether the facts require a judgment for plaintiff or defendant. The bill of exceptions, while professing to detail all the evidence, is no special finding of the facts."

This Court say, after the above citation in *Wade* vs. *Walnut*, 103 U. S. 688: "It is thus seen that the only use which can be made of the bill of exceptions, when there is a special finding of facts, is to present the rulings of the Court in the progress of the trial, upon questions of law. *The facts are conclusively settled by the findings of the Court.*"

In this case we think the power to issue these bonds was ample, and the law in their execution was not only substantially, but literally, complied with. That all the equities in the case are with the holders of these bonds and coupons; that the town of Pana received all it asked for or expected from its bonds; that the railroad was built as agreed upon, and has been, and still is running through the town, to its great pleasure and profit; that they, without complaint, paid their interest as it became due for three years, and are bound by every principle of justice and honor to pay these obligations. They are now attempting to sacrifice sound and long established principles of law to barren technicalities, and ask this highest Court in the land to sanction the repudiation of their contracts. We can find no error in the action of the Circuit Court below, and ask that its judgment be affirmed.

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